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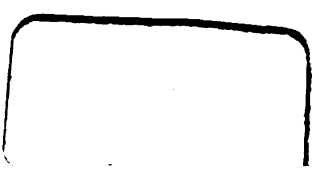

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TO

COPP'S LAND OWNER,

A

REAL ESTATE AND LAND LAW PUBLICATION,

OF

WASHINGTON, D. C.

VOLUMES 1 TO 9--1874-1883.

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PREFACE.

THIS book purports to be an index of the laws, regulations, and decisions contained in the first nine volumes of COPP'S LAND OWNER. It does not undertake to say which decisions are now in force, and which ones have been overruled.

Where two decisions appear to conflict, it is suggested that the facts in the two cases, as well as the language used, should be carefully studied, with the view of harmonizing, if possible, the decisions. But where two rulings are essentially opposite, the one of later date is presumably in force.

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The fact of an, obtaining judgment in court in his favor does not necessarily entitle him to a patent. . . . . V. 2, p. 2

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A stipulation between applicant for patent and a party claiming adversely, that such opposing party may file an, within twenty days after period of publication, is void.
V. 6, p. 105

The question of how the General Land Office may extend its examination into the sufficiency of an, considered. . V. 1, p. 138

After an, has been alleged, the General Land Office cannot inquire into or pass upon the merits of the case, that being solely within the jurisdiction of the proper court. V. 6, p. 34

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The affidavit and, in timber culture entries cannot be made by an agent. . . V. 9, p. 64

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A deserted wife may purchase under act of June 15, 1880, the land in her husband's homestead entry, notwithstanding a, initiated after she had been absent several months. V. 9, p. 116

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As a condition precedent to a second, against the same timber culture entry, the former case must have been finally adjudicated, including appeal . . . . . V. 9, p. 64

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Without a right of, under the timber culture laws, there can be no preference right under the act of May 14, 1880 . . . . V. 9, p. 173

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A rehearing will not be granted upon the application of a, unless such application be supported by a statement under oath. V. 2, p. 54

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The preference right of a, in a timber culture entry, is not prejudiced or defeated by a voluntary relinquishment after contest has been instituted . . . . . V. 4, p. 21

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Under the mining laws the affidavit of continuous posting of, on the claim, and affidavit of compliance with law, etc., are required to be made by the claimant and not by an agent . . . . . V. 6, p. 92

The, of application for mining patent should be posted in the Land Office during the whole period of sixty days . . . . . V. 9, p. 93

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An allegation of an adverse claim upon a proper map is good, and if sufficient as a basis for court proceedings the land department should await the judgment. V. 9, p. 190

In this case the omission in the several, of mention of adjoining mining claims is no objection to issue of patent . . . V. 9, p. 113

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V. 1, p. 50

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Charges for publication of, in a newspaper in mining cases . . . . . V. 8, p. 175

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V. 3, pp. 36, 163

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V. 2, p. 2

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V. 3, p. 162

The expenditure of $500 is not required on each location, but on each separate body of land embraced in the application; upon each separate tract must be posted the, and diagram.
V. 1, p. 134

The first annual expenditure on mines located prior to May 10, 1872, should have been made prior to January 1, 1875, when, should have been first given to delinquent co-owners.
V. 3, p. 66

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An error in the description making the, inconsistent with itself, should put an adverse claimant on his guard, and will not be deemed fatal, unless it is capable of misleading.
V. 2, p. 114

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V. 1, p. 178

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V. 9, p. 138

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V. 9, p. 243

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V. 9, p. 210

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V. 9, p. 210

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The refusal of a, to live on a homestead provided the husband complies with the law, will not invalidate his rights . . . V. 1, p. 92

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When a deserted, and her children are residing upon the homestead entered by her absent husband, the entry cannot be cancelled for abandonment . . . . . V. 6, p. 125

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A homestead claimant cannot by, defeat the law . . . . . V. 9, p. 6

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A woman divorced from her husband is legally dead, and if there was an infant child living at the time of the homesteader's death, the right and fee shall inure for the benefit of the child, notwithstanding a, to the claimant's mother . . . . . V. 6, p. 190

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Certain State selections being null and void *ab initio*, did not operate as a, of the land; on release of reservation by final adjustment of a certain private grant, the pre-emptors were recognized as lawful claimants as though no reservation had ever existed . V. 2, p. 19

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A pre-emptor who settled prior to, for railroads may enter his land at the minimum price at any time prior to the initiation of an adverse right by another settler . V. 1, p. 100

The application of a settler to file on railroad lands whose settlement was subsequent to, should be rejected in the absence of evidence showing the pendency of a legal claim at the date of withdrawal. When an affidavit is filed alleging the existence of such adverse claim, an investigation should be had to ascertain the facts, as the existence of such conflicting claim at the date of definite location would exclude the tract from the grant, notwithstanding the prior settler had made no filing on the land. . . . . V. 1, p. 37

Land within a, is subject to homestead entry in the *interim* of its restoration to market and the suspension of the same. . V. 9, p. 82

All settlers on public lands withdrawn for railroads, shall file and make proof as in other cases, but a failure to so comply within the required time works no forfeiture in the

absence of another settler on the same tract. V. 9, p. 82

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Administrator.
1. The administrator is likewise authorized to make such entry from the date of his official qualification . . . . . V. 14, p. 5
2. The intervention of an adverse claim cuts off the right of an administrator who, after notice of such right, fails to take action within the proper period . . . . V. 14, p. 5

Adverse Claim.
1. A co-owner objecting to the issue of patent must protect his rights under the form of procedure provided for an adverse claimant . . . . . V. 14, p. 151
2. Where an adverse claim is pending, the State cannot substitute another tract as the basis of the selection, where it is found that the original alleged basis is not in existence or has been otherwise satisfied. V. 14, p. 119
3. No right of purchase under the second section of the act of June 15, 1880, exists where the entry was canceled and adverse right intervened, prior to the passage of said act . . . . . V. 14, p. 260

Administrators, 2; Amendment, 3; Appeal, 24; Citizenship, 2; Desert, 7; Homestead, 2, 5; Mines, 18, 19, 20, 21; Notice, 8; Osage, 2; Pre-emption, 14, 18, 35; Proof, 16, 18, 24; Publication; Rehearing; Relinquishment, 2.

Affidavit.
1. Affiants in all cases must be identified to the satisfaction of the officer administering oaths . . . . . V. 14, p. 2
2. Non-mineral affidavit can only be sworn to on personal knowledge, and cannot be made on information and belief . V. 14, p. 61
3. Affidavits must be sworn to and executed in the land district in which the land is situated . . . . . V. 14, p. 26
4. Affidavits filed in a case after decision by the local office cannot be regarded as evidence, though entitled to consideration on motion for re-hearing . . . . . V. 14, p. 16
5. Permission to file affidavit is accorded the defendant herein, as the sufficiency of his original affidavit was not an issue in the contest, and his good faith is apparent. V. 14, p. 154
6. An entry based on a preliminary affidavit executed before a clerk of court not authorized to act in such matters, is voidable only, and the defect may be cured by supplemental affidavit . . . . . V. 14, p. 248

Attorney, 7; Clerk of Court; Contest; Fees, 3; Homestead, 5, 6; Patent, 9; Proof, 21, 22, 23; Residence, 13; Timber Culture, 1, 2, 3, 5.

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Amendment.
1. The right of amendment recognized where the entry was not for the tract intended and due care and prudence had been exercised . . . . . V. 14, p. 74
2. Amendment of an entry will not be allowed on the ground that a tract is now subject to appropriation which was excluded therefrom at the date of applicant's entry. V. 14, p. 74
3. A claimant who acts in good faith and enters the wrong tract of land, will be allowed to amend in the absence of adverse claims, with credit for fees . . . . . V. 14, p. 116
4. A pending application to amend an entry constitutes a reservation of the land applied for . . . . . V. 14, p. 223
5. An entry not made in the real name of the claimant, must be amended to show the true name of the entryman . . V. 14, p. 257

Appeal, 24; Contest, 6, 32; Homestead, 7; Pre emption, 13; Private Entry; Timber Culture, 10.

Appeal.
1. The appellant does not waive the right to prosecute his pending appeal by the institution of a second contest on new ground of action. . . . . V. 14, p. 13
2. Parties cannot appeal from a requirement to furnish additional proof until they have refused to furnish such proof and elect to stand on the proof already supplied. V. 14, p. 4

3. The filing of an appeal, in any appealable case, is a waiver of any and all motions which may have been previously filed relative to the decision from which appeal is taken.
V. 14, p. 15

4. The appeal taken on behalf of the entryman as to the order of procedure having been sustained by the General Land Office, the case should have been remanded for disposition under the Rules of Practice.
V. 14, p. 149

5. An appeal filed by a transferee before notice of the decision was served on the entryman, was in time under the Rules of Practice.
V. 14, p. 87

6. The right of appeal exists where the decision of the General Land Office amounts to a final determination on the merits of the case . . . . . V. 14, p. 189

7. A decision of the local office that the proof offered does not sustain the charge is a finding that becomes final as to the rights of the contestant in the absence of appeal.
V. 14, p. 269

8. While the General Land Office is not precluded from reviewing the decision of the local officers, the case should be considered as between the claimant and the government, and the entry held intact, if it does not appear illegal, or that the entryman has acted in bad faith . . . . . V. 14, p. 269

9. A decision of the local office contrary to law, should be reversed by the Commissioner, in the absence of appeal, under the second exception to Rule 48 of Practice.
V. 14, p. 286

10. A decision of the local office, not coming within any of the exceptions in Rule 48, in the absence of appeal becomes final, and should not be reversed by the General Land Office . . . . . V. 14, p. 50

11. Though the General Land Office may refuse to receive an appeal from its decision not filed in time, it has no authority to dismiss such an appeal if it is received without objection . . . . . V. 14, p. 156

12. But the refusal of the Commissioner to entertain the motion for review affords no ground for the dismissal of the appeal.
V. 14, p. 150

13. The filing of an appeal from the decision of the Commissioner removes the case from the jurisdiction of the General Land Office . . . . . V. 14, p. 257

14. Though an appeal will not lie from the decision of the Commissioner ordering a hearing, the refusal to order a hearing is, when it amounts to the denial of a right, appealable.
V. 14, p. 185

15. Under the Rules of Practice now in force, the right of appeal from a Commissioner's decision, affirming the local office, is lost by failure to appeal from the decision of the local office . . . . . V. 14, p. 150

16. In all cases, whether appeals are defective under Rule 82, or incomplete under Rules 88 and 90, they are to be ultimately forwarded to the Department for its action.
V. 14, p. 257

17. In the absence of specifications of error an appeal will not be entertained.
V. 14, p. 257

18. In case of decision by the local office against the Government, the Commissioner has authority, whether appeal is taken or not, to examine into the merits of the case and render judgment accordingly . V. 14, p. 167

19. Ordinarily the supervisory authority of the Secretary should be invoked by appeal, but in case of a decision rendered without jurisdiction, the irregularity may be corrected in a more summary manner . . V. 14, p. 150

20. The General Land Office has no jurisdiction over a case after appeal therein.
V. 14, p. 51

21. The filing of an appeal operates as a withdrawal of a pending motion for a rehearing . . . . . V. 14, p. 212

22. The right to be further heard therein will be lost by failure to appeal or apply for review within the proper period. V. 14, p. 150

23. Exception to such general rule will not be made, though it appear that the case is *ex parte*, and that the right of appeal was lost through the negligence of attorneys.
V. 14, p. 200

24. Claimants lose their right of amendment through failure to appeal from an adverse decision by the Commissioner of the General Land Office, where adverse claim intervenes . . . . . V. 14, p. 24

25. In case of a decision in the General Land Office where the rights of two or more of the parties are adversely affected thereby, the appeal of one will not preclude the consideration of a motion for review filed by another . . . . . V. 14, p. 149

26. The refusal of the General Land Office to review a decision is not appealable.
V. 14, p. 149

27. A protestant is not entitled to the right of appeal . . . . . V. 14, p. 151

28. Statements, not controverted or questioned, made as the basis of a motion to dismiss, of which due notice has been given, are accepted as true. On the motion of the appellee, an appeal, not filed in time, must be dismissed . . . . . V. 14, p. 234

29. Prompt reports of appeals or other action, and evidence of service of notice must be transmitted in each case . . . . V. 14, p. 97

Attorney, 2; Certiorari; Mines, 8; Notice; Railroads, 64; Repayment, 7; Res Judicata, 2; Secretary, 5; Survey, 10.

Application to Enter.

1. All rejected applications and proofs must be retained on the files of the local land office, and not returned to the parties. But the parties must be notified in writing of the date and cause of rejection . . V. 14, p. 125

Attorney, 7; Contest, 7, 25, 28; Homestead, 23, 24; Mines, 12, 14, 20, 21; Notice, 2; Railroads, 61; Timber Culture, 11.

Appropriations.

1. For sundry civil expenses of the Government . . . . . V. 14, p. 47

2. For the current and contingent expenses of the Indian Department . . . V. 14, p. 69

3. For the legislative, executive, and judicial expenses of the Government . V. 14, p. 10

Arizona.
Railroads, 6, 10.

Assignee.
Coal, 2; Mortgage, 3; Warrant, 2.

Atlantic & Pacific R. R.
Railroads, 52, 58, 88.

Attorney.
1. Attorneys before local offices. V. 14, p. 2

2. Applications for admission to practice before the local land offices should be presented to the Register and Receiver for their action, with right of appeal to the Commissioner and Secretary . . . . . V. 14, p. 14

3. When an attorney enters his appearance, his authority for such action will be presumed —unless a different rule is prescribed—but the presumption is not conclusive, and the authority of the attorney may be inquired into, either at the request of the opposite party or by the court on its own motion. . V. 14, p. 221

4. The filing of a duplicate Receiver's receipt is not sufficient to constitute the party filing the receipt an attorney, or entitle him to the rights and privileges of an attorney or agent, especially when he has never been authorized under Department regulations to represent claimants . . . . . V. 14, p. 113

5. Where an attorney appears in a case, the Rules of Practice require that notice should be served on him. Notice to the claimant only is not sufficient . . . . . V. 14, p. 237

6. An attorney practicing before the Department is presumed to know the Rules of Practice, and that the local officers have no authority to waive or suspend a rule prescribed by the Department . . V. 14, p. 237

7. Registers and Receivers must not permit applicants or their attorneys to retain the application or affidavit after the certificate of either officer has been attached thereto, nor permit an entry subsequent to the presentation of the affidavit, or its execution before one of them, nor must land be held for one moment for any one for alleged want of money to pay fees . . . . . V. 14, p 125

8. An enrolled attorney who aids or acts with a disbarred attorney should be no longer recognized as an attorney. Only enrolled attorneys can as attorneys examine the records of the local land offices . . . V. 14, p. 125

9. Until an attorney is admitted to practice before the land department, he cannot be disbarred, and he should not be recognized as an attorney in land cases . . . . . V. 14, p. 1

10. Attorneys and agents who extort money from entrymen by threats and intimidation should be disbarred from practice by the Register and Receiver, upon sworn statements as a basis for investigation . . . . V. 14, p. 97

11. The employment of dishonest or disreputable agents will be sufficient ground for the disbarment of attorneys before the local land officers . . . . . V. 14, p. 186

Appeal, 23; Heirs, 2; Homestead, 31; Notice, 20, 26.

Beaubien and Miranda Grant 37

Board of Equitable Adjudication.
Homestead, 13; Mines, 18; Naturalization; Patent, 2; Wife, 4.

Burden of Proof.
1. In case of forfeiture, the burden of proof is upon the attacking party, and the evidence of bad faith should be affirmative and preponderating . . . . . V. 14, p. 114

2. Non-compliance with the law being shown, the burden of the proof is thereafter upon the entryman to show his good faith and satisfactory reasons for his failure to meet the requirements of the law. . . . V. 14, p. 154

Fraud; Hearing, 2; Mines, 9; Patent, 5, 13; Timber Culture, 14.

Business.
Homestead, 10; Residence, 2, 4, 20.

California.
Wife, 1, 2.

Cancellation of Entry.
Injunction to restrain . . . . V. 14, p. 123
Commutation, 1; Contest; Hearing.

Central Pacific R. R.
Railroads, 38.

Certificate.
Homestead, 28, 29, 30; Mines, 20; Mortgage, 1; Notary Public, 2; Patent, 15; Proof, 21.

Certiorari.
1. The writ of certiorari will not be granted where the right of appeal is lost through failure to file the same in time . . V. 14, p. 200

2. The application for certiorari herein, being in effect an appeal, is treated as such, having been filed within the proper time therefor. V. 14, p. 150

3. If on the showing made for certiorari it is apparent that the applicant's appeal, if before the Department, would be dismissed, the writ will be denied . . . . . V. 14, p. 257

4. A copy of the decision complained of should accompany an application for certiorari. . . . . V. 14, p. 88

Chicago, St. Paul, Minneapolis and Omaha Railroads, 47.

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Chippewa Indians.
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Citizenship.

1. An act to restrict the ownership of real estate in the Territories to American citizens. V. 14, p. 46

2. Though declaration of intention to become a citizen is not made until after filing declaratory statement, such defect, in the absence of an intervening adverse claim, is cured by the subsequent declaration, and the pre-emptive right of filing cannot be again exercised by the settler . . . . . V. 14, p. 128

3. If alien born claimant who swears that his father was a naturalized citizen cannot prove the existence, loss or destruction of the record of his father's naturalization, he must prove his naturalization . . . V. 14, p. 198

4. An alien can acquire no right to public land before filing declaration of his intention to become a citizen . . . . . V. 14, p. 167

Timber Culture, 4.

Claim.

1. Appropriation of money by special acts of Congress for the payment of particular claims does not warrant the conclusion that the government recognizes its legal liability for the amount of such claims, or for the amount of other claims of like character. V. 14, p. 104

Clerk of Court.

If the land is in a county attached for judicial purposes to another county, the clerk of the latter is the proper officer before whom to make the affidavit acquired in section 2294 R. S. . . . . V. 14, p. 248

Affidavit, 1, 6; Homestead, 5, 6; Notary Public, 2, 3; Notice, 19; Proof, 3; Woman, 1.

Coal.

1. The mere fact that there are surface indications of coal on public land will not of itself prevent the acquisition of title to the land under the pre-emption laws; nor will the fact alone that after acquisition of such a title the surface indications prove to be veins which are, by a change of circumstances, profitably worked, invalidate such a title. V. 14, p. 263

2. Rights of assignee under coal land declaratory statement. . . . . V. 14, p. 283

3. In order to constitute the exemption of coal lands contemplated by the pre-emption act under the head of "known mines," there must be ascertained coal deposits upon the land, of such an extent and value as to make the land more valuable to be worked as a coal mine, under the conditions existing at the time, than for merely agricultural purposes. . . . . V. 14, pp. 262, 263

Mines; Scrip, 2.

Colorado.

Indian Lands, 20; School Lands, 3, 4, 5.

Commission.

Fees, 3.

Commutation.

1. By commutation the original entry is

merged in the cash entry, and by operation of law the cancellation of the latter is also in effect the cancellation of the former. V. 14, p. 153

2. On the rejection of commutation proof, with the right to submit new proof, it may be presented at any time within the lifetime of the original entry . . . . . V. 14, p. 187

3. The cancellation of a commutation cash certificate terminates all rights under the original entry . . . . . V. 14, p. 187

4. The right acquired by the original entry is lost if the entry made on commutation is cancelled for the reason that a *bona fide* residence has not been established . . . V. 14, p. 154

5. Where an application to commute has been rejected by the local officers and General Land Office, but allowed by the Department, the original entry may, at the option of the claimant, remain intact, or be commuted to cash entry on the evidence submitted. V. 14, p. 250

6. On the commutation of a homestead entry, the plea of poverty, as an excuse for absence from the land, is not consistent with good faith . . . . . V. 14, p. 19

7. The fact of commutation does not in all cases defeat the plea of poverty when offered as an excuse for absence from the land or want of improvement . . . . V. 14, p. 201

8. A cash entry based on commutation proof should not go to patent except on due proof regularly submitted . . . V. 14, p. 177

9. In making commutation homestead proof, the requirements of the pre emption laws must be followed. The words "cultivation" and "improvement" appear to have been used synonymously. In this *ex parte* case, in view of the claimant's meagre improvements, yet apparent good faith, an opportunity will be allowed her to furnish additional proof as to cultivation. . . . . V. 14, p. 238

10. In view of the fact that the claimant is a woman, dependent almost solely on her own efforts for a livelihood, her scanty improvements and frequent absences are held not to vitiate her cash entry, which is allowed to stand . . . . . V. 14, p. 187

Homestead, 9, 14, 22; Naturalization; Proof; Publication, 2; Residence, 10.

Complaint.

A specimen of the complaints against the administration of the General Land Office. V. 14, p. 281

Contest.

1. A party may contest as many homestead entries as he may desire. The qualification of a contestant to make entry of the tract is only material in considering the question of his preference right . . . . . V. 14, p. 149

2. An offer to sell the land entered is not sufficient ground to warrant contest. The offer to sell may be proven in support of a charge that the entry was speculative and fradulent, as may also the fact of procuring a friendly contest against the entry. V. 14, p. 222

3. The contestant's motive in attacking the entry, or his want of qualification to enter, is not material to the entryman's defence. V. 14, p. 150

4. A preference right of entry is accorded to one who, by the initiation of contest, secures the cancellation of a desert land entry. V. 14, p. 102

5. No preference right of entry can be acquired through a contest which is shown by the evidence to have not been prosecuted in good faith . . . . . V. 14, p. 198

6. Contests initiated after the filing of an application to amend, cannot be considered. V. 14, p 18

7. A contest instituted against an original entry suspends action upon a subsequent application to purchase under the second section of the act of June 15, 1880 . . V. 14, p. 150

8. It is not sufficient for the applicant to state that he did not know of the testimony in time to produce it for the trial; it must appear that he could not have discovered it by reasonable diligence . . . . . V. 14, p. 138

9. Refusal to submit evidence when offered an opportunity in regular course of proceedings is a bar to claimant's right to be heard further on the merits of the case. . . . V. 14, p. 17

10. Hearsay testimony is admissible, in the absence of better evidence, to prove the death of a party . . . . . V. 14, p. 234

11. The admissibility of evidence is determined by the charge under investigation. V. 14, p. 150

12. In proceeding against an entry the affirmative is with the government. V. 14, p. 259

13. If the contestant proves that the entryman has not made the tract involved his home and resided thereon, the entry should be canceled . . . . . V. 14, p. 284

14. Where rights and equities are equally divided, the rule that "he has the better title who was first in point of time" should be followed . . . . . V. 14, p. 139

15. Objections to the sufficiency of the matters charged in the affidavit of contest or to the relevancy of the evidence under the charge as laid, can be raised by the defendant only. V. 14, p. 115

16. Where the evidence is conflicting, the joint opinion of the local officers is entitled to special consideration . . . . . V. 14, p. 214

17. On the defendant's failure to cross-examine witnesses at the proper time, the recall of said witnesses, for such purpose, should be at his expense. . . . . V. 14, p. 115

18. If the testimony taken at a hearing shows that an entry should be canceled, such action will be ordered, though the evidence may not fully sustain the charge upon which the contest was brought . . . . V. 14, p. 85

19. The defence is entitled to show acts done in compliance with the law prior to the receipt of notice of the contest . V. 14, p. 150

20. On the admission that the witness, if present, would testify as alleged in the affidavit for continuance, such allegations should receive due consideration as evidence in the case . . . . . V. 14, p. 137

21. A contest affidavit is in the nature of an information, and when it has been ac-

cepted, notice issued, and service made thereof, jurisdiction is acquired . . . V. 14, p. 126

22. In a contest against a homestead entry, it is not necessary to prove the entryman's abandonment for six months . . V. 14, p. 284

23. The right acquired by a contestant is personal, and on his death the question at issue is between the entryman and the government . . . . . V. 14, p. 150

24. In case of contest against the entry of a deceased homesteader, the heirs of the entryman must be made parties defendant. V. 14, p. 234

25. Where a homestead entryman after initiation of contest against his entry, applied to purchase the land under the second section of the act of June 15, 1880, and he was allowed to so purchase, his cash entry will be allowed to stand after the withdrawal of the contest . . . . . V. 14, p. 127

26. A favorable decision on a motion to dismiss, filed by the defendant, after the submission of the contestant's evidence, obviates any necessity on the part of the defendant to submit testimony while such judgment remains unreversed . . . . . V. 14, p. 257

27. The withdrawal of a protest will not prevent action on the matters alleged therein, if it appears that the applicant has in fact failed to comply with the law . V. 14, p. 270

28. A contest terminating in an order of cancellation, cuts off the right of purchase under said act . . . . . V. 14. p. 150

29. The omission of the venue from an affidavit of contest is not such a defect as to invalidate the contest, nor can a stranger to the record take advantage thereof. V. 14, p. 150

30. The refusal of the entryman to answer, on cross-examination, questions pertinent to the issue, is such an irregularity as to warrant the General Land Office in a re-examination of the case, though no appeal was taken from the decision of the local office . V. 14, p. 85

31. If the affidavit of contest is defective, the jurisdiction is not affected thereby, and objection can only be raised at the hearing. V. 14, p. 126

32. If the affidavit of contest is defective, the right of amendment will be accorded on due application therefor . . . V. 14, p. 222

33. No rights are acquired by fraudulent and speculative contests . . . V. 14, p. 152

34. An amended affidavit of contest submitted after the case is closed in the local office, embracing further charges against the entry, is in effect a new affidavit of contest, which should be held to await the final determination of the pending suit. V. 14, p. 233

35. The right to proceed with a second contest exists only on the final disposition of the prior pending contest . . . V. 14, p. 14

36. In all cases of depositions on interrogatories, Rule of Practice No. 24 must be followed . . . . . V. 14, p. 61

37. History of interesting land contest. V. 14, p. 226

Affidavit, 5; Appeal; Mortgage, 5; Notice, Practice, 6; Preference Right; Rehearing; Relinquishment, 3, 6; Timber Culture, 15.

Continuance.

Motions for continuance are addressed to the sound discretion of the local officers, but an abuse of such discretion will be corrected by the appellate tribunal . . . V. 14, p. 115

Co-Owner.

Adverse Claim, 1.

Copy.

Mines, 20; Notice, 26.

Court Decisions.

Colorado Coal & Iron Co., *vs.* United States . . . . . V. 14, p. 262

Malcolm McDougal *vs.* John Y. Ostrander and James R. Hayden. Cancelling Land sales or entries . . . . . V. 14, p. 123

Rose *vs.* The Nevada & G. V. W. & L. Co., Patent . . . . . V. 14, p. 160

The Argentine Mining Co., *vs.* The Terrible Mining Co. 1 Mining Claim, Limits and Boundaries . . . . . V. 14, p. 147

Cultivation.

Commutation, 9; Homestead, 8, 9; Timber Lands, 3.

Dakota.

Proof, 1; Railroads, 12; Residence, 16.

Declaratory Statement.

Citizenship, 2; Coal, 2; Desert, 13; Homestead, 25; Osage, 1; Preëmption; Private Lands, 22.

Deputy Mineral Surveyor.

Mines, 1, 20.

Desert Lands.

1. General Instructions as to entries. V. 14, p. 103

2. Application to make desert land entry accompanied by the purchase money constitutes a segregation of the land. V. 14, p. 102

3. Application to make desert land entry accompanied by the purchase money constitutes a segregation of the land. V. 14, p. 143

4. A tract embracing several acres of timber is not subject to desert entry, though the land will not produce an agricultural crop without irrigation . . . . . V. 14, p. 78

5. Lands that are partly agricultural and partly desert cannot be entered under the desert act . . . . . V. 14, p. 61

6. A desert entryman conducting water upon land temporarily does not comply with the law. The improvements must be of a permanent character . . . . . V. 14, p. 61

7. The entry, though made when the land was apparently not subject to appropriation, will not be disturbed, as the claimant has acted under the allowance of said entry, and the legal bar thereto has been removed, while no adverse claim has been, or is now, asserted . . . . . V. 14, p. 144

8. The departmental regulations with respect to "compactness" of desert entries modified . . . . . V. 14, p. 223

9. In determining the compactness of an entry, the situation of the land and its relation to adjacent lands should be duly considered. V. 14, p. 103

10. The non-irrigation of rocky and hilly portions of the land does not defeat the right of entry, where the claim was made in good

faith, and substantial reclamation of the irrigable portion thereof is shown . . V. 14, p. 34

11. The necessary exclusion of a portion of the lands originally entered, on account of their non-irrigable character, leaving the entry defective for want of contiguity in the tracts covered thereby, the entryman may elect which contiguous tract he will take.
V. 14, p. 144

12. An entry in conformity with the statutes in compactness must be allowed, although in contravention of the strict letter of the general circular . . . . V. 14, p. 223

13. Under the desert land act, but one declaration of intention to make entry is allowed.
V. 14, p. 158

14. Patent may issue, though the entry covers a small portion of land not susceptible of irrigation . . . . . V. 14, p. 144

Contest, 4; Preference Right, 3; Publication, 2; Relinquishment, 4; Repayment, 8.

Devisee.

The act of May 14, 1880, enlarged the homestead right so that settlement before survey was duly protected, and it is accordingly held that where a homestead settler dies prior to survey, the right of entry inures to his devisee. . . . . V. 14, p. 176

Preëmption, 32.

District.

Affidavit, 3; Homestead, 15; Mines, 1; Proof, 5; Timber Culture, 2.

Donation Claim.

1. If either, or both of the parents, have received a donation under any of the acts, the children are not entitled to claim under the fifth section of the act of July 17, 1854.
V. 14, p. 21

Double Minimum.

1. Where the initial entry of double minimum land was made prior to the promulgation of the circular of June 29, 1887, the entryman should be required to pay but one dollar and twenty-five cents per acre for the land so entered . . . . . V. 14, p. 169

2. Where Sections 16 and 36 are wanting in a fractional township, all of which is within a railroad withdrawal, the State cannot select double minimum lands for such deficiency.
V. 14, p. 118

3. There is no authority for the return of the excess where the land was improperly sold at double minimum . . . V. 14, p. 159

School Lands, 2.

Dwelling House.

Homestead, 12; Pre-emption, 25, 27.

Entry.

1. During the existence of an entry the land covered thereby is not subject to appropriation by another . . . . . V. 14, p. 285

2. An entry, though made when the land was not subject to appropriation, on the removal of the bar, may be allowed to stand intact . . . . . V. 14, p. 285

3. In case of an illegal entry, claimants will not be allowed to make a new one in lieu thereof . . . . . V. 14, p. 26

4. A second entry may be allowed when, through no fault of the entryman, the first entry could not be carried to patent. The entryman must exercise due care and prudence in the selection of land and entry thereof, and in the absence of such care will not be allowed a second entry if the first fails.
V. 14, p. 257

5. The Register should know that the entry is complete before he puts any marks on the plats or tract-books of his office.
V. 14, p. 125

Administrator, 2; Affidavit, 6; Amendment; Attorney, 7; Commutation, 1; Contest; Desert; Homestead; Indian Lands, 4; Meandered Stream; Mines; Minor; Mortgage, 3; Trespass, 2.

Evidence.

Affidavit, 4; Burden of Proof, 1; Commutation, 5; Contest; Executive Duties; Mines, 21; Review; Special Agent, 2; Timber Culture, 17.

Examiners of Surveys.

Account, 1.

Excess.

Double Minimum, 3; Repayment, 2, 3.

Executive Duties.

The "executive duties" of a department are those required of its officers in the administration of the law upon the subjects under its jurisdiction, though such duties may require in their performance the examination of evidence and the exercise of judgment thereon . . . . . V. 14, p. 158

Expenditure.—*See Appropriation.*

Mines, 10, 21.

Fees.

1. Reducing testimony to writing, etc.
V. 14, p. 149

2. No charge for section plats or general information . . . . . V. 14, p. 208

3. The claimant made affidavit that the land in question was devoid of timber, without any examination or knowledge of its condition, and hence he cannot be permitted to take advantage of his own negligence. Repayment of fees and commissions is refused.
V. 14, p. 252

Amendment, 3; Attorney, 7; Register and Receiver, 6.

Filing.

Declaratory Statement.

Final Adjudication.

1. Final adjudications of the Department will not be disturbed on the mere allegation of error in construing the law . . V. 14, p. 159

Final Certificate.

1. Until all the preliminary acts required by the law are performed, a claimant for land under any of the public land laws acquires no right against the government, and the title to the land remains under its control.
V. 14, p. 233

Final Proof.

Proof.

Florida.

Private Land, 9, 10; Railroad, 39.

Forfeiture.

1. The departmental decision opening to entry the lands certified back to the government by the State of Iowa was not a declara-

tion of forfeiture, but a declaration that said lands had been inadvertently and illegally patented to said State, and should be restored to the public domain . . . . . V. 14, p. 228

Burden of proof, 1; Railroads; Residence, 19.

Forts.

Railroad, 3, 4.

Fort Dodge Reservation.

Osage, 4.

Fraud.

When a plaintiff's right of action is grounded on a negative allegation, which is an essential element in his case, or which involves a charge of criminal neglect of duty or fraud by an official, the burden is on him to prove that allegation, the legal presumption being in favor of the party charged.

V. 14, p. 262

Contest, 2, 33; Hearing, 3; Mortgage, 4; Patent, 5, 7, 13; Repayment, 4; Survey, 8, 9; Wife, 3; Will.

Hailey.

Public Notice, 2.

Hearing.

1. A hearing ordered on a special agent's report looking toward the cancellation of a final entry is a proceeding *de novo*, in which the *ex parte* testimony contained in said report should not be considered . V. 14, p. 149

2. As in such hearings the burden of proof is on the government, it should first submit its proof before the defendant is required to present his defense . . . . . V. 14, p. 149

3. In the investigation of an alleged fraudulent entry the Commissioner of the General Land Office may, in the exercise of a sound discretion, order a second hearing.

V. 14, p. 209

4. No law, decision or regulation precludes the General Land Office from acting on new evidence which comes to any pending case, or acquiring further information, by hearing or otherwise, at any time prior to patent.

V. 14, p. 200

Appeal, 14; Contest; Homestead, 9; Mines, 6, 8, 21; Mortgage, 5; Notice; Preemption, 6; Proof; Relinquishment, 3.

Heirs.

1. A deed executed by the lawful heirs of the original reservee—so determined by a tribunal of competent jurisdiction—and in harmony with said treaty, should be approved.

V. 14, p. 290

2. An entry in the name of and for the benefit of all the heirs may be made on the application of one of the heirs, without power of attorney from the other heirs authorizing such action. . . . . V. 14, p. 20

Contest, 24; Donation; Improvements, 3; Notice, 17; Pre-emption, 30, 31, 32; Timber Culture, 12.

Homestead.

1. The homestead entry of a settler under section three of the act of May 14, 1880, relates back to the date of settlement, and the intervening entry of another must be held to have been made subject to the superior right of the homestead settler . . . V. 14, p. 248

2. The failure of a homestead settler to make entry within the period provided by the act of May 14, 1880, three months on unoffered land, renders his claim subject to any valid intervening settlement right.

V. 14, p. 257

3. The settlement of a homesteader is protected by the act of May 14, 1880, as against other and later settlers, for the period of three months only, after which the next settler in point of time, who has complied with the law, takes the land . . . . V. 14, p. 150

4. In view of the fact that settlement with valuable improvements was made long prior to survey, and that the entry, which was allowed, covers land so situated that the relinquishment of a portion thereof would be without value to the government, and of the small amount involved, an exception is made to the rule of approximation . . . . V. 14, p. 155

5. Execution of the preliminary homestead affidavit before a clerk of the court, without prior residence, renders the entry voidable—not void—and the defect may be cured in the absence of an adverse claim.

V. 14, p. 285

6. A homestead entry in which the preliminary affidavit was not made before the clerk of the court in the county in which the land is situated, but before the clerk of the court in an adjoining county, is voidable only, and the defect may be cured by proper supplemental affidavit . . . . V. 14, p. 154

7. Where a homestead claimant makes entry of a tract of land occupied by a preemptor who was falsely represented to have abandoned his claim, such homesteader will not be allowed to amend his entry to embrace other and vacant land. . . V. 14, p. 23

8. Cultivation and improvements, as well as residence, are necessary under the requirements of the homestead law . . V. 14, p. 187

9. When a commuting homesteader failed to show satisfactory cultivation on final proof, evidence of extensive cultivation at a subsequent hearing may be accepted. V. 14, p. 115

10. One who occupies and is making use of public land for business purposes, prior to the entry thereof, is precluded from appropriating such land under the homestead law, which excludes from entry thereunder land "actually settled and occupied for the purpose of trade and business." . . V. 14, p. 285

11. A party in feeble health, who makes a homestead entry, presumably does it in bad faith. . . . . V. 14, p. 246

12. Petition of claimant for time to show compliance with the homestead law is denied, notwithstanding he has erected a house and established residence since the date of the Secretary's adverse decision . . V. 14, p. 116

13. Where a homesteader was prevented from making his final proof on the day advertised, on account of causes beyond his control, his proof may be submitted to the Board of Equitable Adjudication . . . . V. 14, p. 247

14. Where a party made homestead entry and established residence, and was absent thereafter teaching school for eighteen months,

except during school vacations and. brief visits to the land, the commutation proof will be accepted in view of claimant's good faith and the facts shown . . . . V. 14, p. 163

15. Proceedings where a homesteader desires to perfect title to land lying in two land districts . . . . . V. 14, p. 246

16. A deed made by the entryman prior to survey in adjustment of possessory rights, based on a mistake as to the location of the land, and covering a portion of that subsequently entered, but revoked prior to entry, is no bar to the perfection of the homestead claim . . . . . V. 14, p. 154

17. The fact that prior to entry or final proof the entryman made a contract to convey his homestead claim in whole or in part to another after final proof, will not *per se* invalidate his claim. The agreement to convey is but a presumption of bad faith, which may be rebutted by proof . . . . . V. 14, p. 154

18. The absence of the entryman, or his family, from the land, may be satisfactorlly explained where it is evident that the entry was made in good faith and for the purpose of acquiring a home . . . . . V. 14, p. 224

19. Only homesteaders who had taken eighty acres and were in possession of the same at date of passage of this act, could relinqulsh their homestead entries and make new ones. V. 14, p. 250

20. The right to make an adjoining farm entry cannot be invoked for the purpose of securing a hundred and sixty acres under the general homestead law . . . . V. 14, p. 152

21. The claim of John G. Brady to a homestead, covering in part the cemetery of the natives and preventing the growth of the town of Sitka in the only direction in which it can grow, is rejected . . . . V. 14, p. 213

22. In determining the good faith of entrymen, there can be no fixed rule: the degree and condition in life may be considered. The right to commute a homestead entry is a statutory right. The proof in this case does not show bad faith, and failing to show good faith, is rejected, but the claimant is allowed to make new proof any time during the lifetime of his original entry . . V. 14, p. 202

23. The right of purchase conferred by the second section of the Act of June 15, 1880, not being dependent upon compliance with, or qualifications under the homestead law, nor subject to any other restrictions than are imposed in case of ordinary cash entry, is not defeated by contract of sale made prior to purchase . . . . . V. 14, p. 89

24. A purchase under this act is not barred after final homestead certificate has issued. V. 14, p. 284

25. The right to file a soldier's declaratory statement and make homestead entry of land not covered thereby, within the life of such filing, was not conferred by the homestead law, nor has it been recognized by the regulations of the Land Department. V. 14, p. 165

26. In computing the term of military service to be deducted from the required period of residence, the actual length of the service should be allowed as shown by the records of the War Department . . . . . V. 14, p. 115

27. If the soldier was discharged on account of disability existing prior to enlistment, actual length of service, not term of enlistment, determines the amount of time to be deducted from the required period of residence . . . . . V. 14, p. 115

28. The clause relative to the need of proof that the soldier is alive at date of location should not be inserted in certificates issued prior to February 13, 1883. . . V. 14, p. 246

29. While a soldier's additional homestead certificate is outstanding, the soldier cannot make a homestead entry in person. V. 14, p. 246

30. Where a soldier's right has been certified under Sec. 2306, U. S. Revised Statutes, a power of attorney by the person applying to locate is not essential when the application is signed by the soldier . . . . . V. 14, p. 246

31. There is nothing in the Land Office regulations allowing Attorneys to make entry repugnant to the acts of Congress, and their action is final and conclusive . V. 14, p. 160

Commutation, 6, 9; Contest, 1, 24, 25; Devisee; Indian Lands, 7; Mines, 3, 6; Naturalization; Preëmption, 10, 18; Proof; Publication, 2; Railroads, 65, 68, 84, 99, 105; Repayment, 7; Residence; Settlement; Timber Culture, 10, 13, 16; Timber Lands, 3; Townsite, 1; Wife, 3. 4, 5.

Idaho.

Public Notice, 2.

Illinois.

An act to convey to and confirm in the city of Aurora, in the county of Kane, and State of Illinois, a small island in Fox River, located within the limits of said city. V. 14, p. 47

Improvements.

1. As the improvements mentioned were not made by or for the Indians concerned, but in the interest of speculators, the several scrip locatious are held for cancellation. V. 14, p. 243

2. Where a claimant appealed to the Secretary from the Commissioner's decision, rejecting his claim because of lack of improvements, such claimant on showing valuable improvements placed on his claim after the date of the Commissioner's ruling, may be allowed to make new final proof . V. 14, p. 73

3. The rights of parties holding under a conveyance from one who had no title or interest to convey, to compensation for improvements placed on the land, must be settled in the courts, and should not delay the approval of a deed executed by the legal heirs. V. 14, p. 290

Commutation, 7, 9, 10; Desert, 6; Homestead, 4, 8; Mines, 9, 10; Notice, 1; Preemption, 22, 24, 27, 29; Preference Right, 4; Private Lands, 22; Residence, 2, 17; Townsite, 2.

Indemnity Lands.

Indian Lands, 20, 21; Mines, 5; Railroads; Swamp, 5.

Indian Lands.

1. The provisions of Section 2, act of March 3, 1857, directing the allowance, to each of the States, of five per cent. of the proceeds resulting from the sale of land theretofore included in Indian reservations, are not applicable to States subsequently admitted to the Union . . . . . V. 14, p. 104

2. An act to provide for the allotment of lands in severalty to Indians on the various reservations . . . . . V. 14, p. 44

3. Indians that have heretofore received an allotment of a less quantity of land than provided in said act should receive thereunder an additional allotment sufficient to make the entire amount equal to that named in said act. V. 14, p. 63

4. Allotments under the Act of March 3, 1863, are excepted from the Executive order opening an Indian reservation to settlement and entry . . . . . V. 14, p. 159

5. The provisions of the Act of July 4, 1884, do not constitute a bar to the allowance of allotments on the old Columbia reservation, under the fourth section of the Act of February 8, 1887 . . . . . V. 14, p. 145

6. Allotments may be made by the regular agents in charge of the respective reservations, or in the absence of such agents, by special agents appointed for that purpose. V. 14, p. 63

7. Under the Act of July 4, 1884, the acceptance by an Indian of a patent for certain lands in a reservation, does not deprive him of the benefits of the homestead law. V. 14, p. 62

8. All patents hereafter issued to Indians embraced within the provisions of said Act should be in the form prescribed in the Act. V. 14, p. 63

9. Where the Secretary of the Interior has recognized the establishment of an Indian reservation by action of the President, the Commissioner of the General Land Office has no authority to set aside such reservation, or to declare it illegal . . . . . V. 14, p. 289

10. Relative to lands in the possession of Indian occupants . . . . . V. 14, p. 219

11. The approval of an Indian deed required under section twenty-three of the treaty of February 23, 1867, and the regulations adopted in pursuance thereof, was not intended to decide questions of inheritance or constitute a bar to the assertion of the rights of the legal heirs, but to satisfy the Secretary of the Interior that the benefit of the grant would be received by the original reservee or his heirs . . . . . V. 14, p. 290

12. Legal subdivisions of odd numbered sections lying south of said stream inured to the Northern Pacific grant on the extinction of the Indian title . . . . . V. 14, p. 142

13. An order of the President, withdrawing lands for the use of Indians, existing at the date of a railroad grant and the definite location thereunder, excepts the land covered thereby from the operation of said grant. Until said order was formally revoked, the effect thereof, as against the grant, remained unchanged, though the purpose of the withdrawal had ceased to exist . . . . . V. 14, p. 7

14. An Act to amend the third section of an act entitled "An Act to provide for the sale of the Sac and Fox and Iowa Indian Reservations, in the States of Nebraska and Kansas" . . . . . V. 14, p. 44.

15. The provision, in the act admitting Kansas to the Union, for the payment of five per cent. of the net proceeds resulting from the sale of lands by the government was limited by its terms to the sale of *public* lands, and affords no basis for a claim where sales are made of Indian lands by the government acting as a trustee . . . . . V. 14, p. 104

16. By the act of July 4, 1884, the land acquired from the White Oak Point and Mille Lac bands of Chippewa Indians, by treaty of March 20, 1865, were withheld from disposal in accordance with the provisions of said treaty . . . . . V. 14, p. 82

17. The grant of land to this road was erroneously adjusted because the reservation to the New York Indians had not been extinguished at date of grant, and is not yet extinguished. The president's proclamation cannot extinguish a treaty reservation. V. 14, p. 218

18. The entryman is entitled to one year from date of entry within which to make his first payment . . . . . V. 14, p. 108

19. Santee Sioux Indian Reservation was not open to entry until the approved list of Indian allotments was received at the local land office . . . . . V. 14, p. 12

20. Status of the 16th and 36th sections, in townships within Ute reservation, considered. Under the grant with the Utes, the State of Colorado is not entitled to indemnity. V. 14, p. 8

21. Inasmuch as at the date of survey the sixteenth and thirty-sixth sections lying within the Ute reservation had been disposed of, the State is entitled to indemnity therefor. V. 14, p. 260

22. The words "on the White Earth reservation" are repugnant to otherwise clearly expressed intent and meaning, and must yield thereto in construction . . . . . V. 14, p. 82

Appropriations, 2; Heirs, 1; Improvements, 1; Railroads, 1, 2, 6, 11, 12, 15, 19.

Instructions.

Instructions to Register and Receiver, or to either of them, or to an Inspector, are intended for the information and guidance of all. V. 14, p. 25

Insanity.

Before further action can be taken in this case, the contestant must present satisfactory evidence that the defendant has been declared sane . . . . . V. 14, p. 150

Residence, 14.

Iowa.

Railroads, 5, 97.

Iowa Indians.

Indian Lands, 15.

Irrigation.

Desert Lands.

Joint Entry.
Preëmption, 29.
Kansas.
Indian Lands, 15; Nebraska; No Man's Land, 2; Woman 1.
Kansas Pacific Railroad.
Railroads, 49.
Kinkead, John H.
An act referring to the Court of Claims for adjudication the claims of John H. Kinkead, Samuel Sussman and Charles O. Wood. V. 14, p. 43
Letter of Transmittal.
A separate letter of transmittal to accompany each case. . . . . V. 14, p. 97
Notice, 9, 11, 12, 22, 23, 24; Publication, 9.
Loan Agents.
Information to . . . . . V. 14, p. 73
Mortgage, 4.
Location.
Mines, 2, 15, 16, 17, 20; Patent, 1; Scrip, 5, 6.
Lodes.—*See Mines.*
Louisiana.
Private Lands, 10, 23.
Meandered Stream.
An entry including tracts lying upon the opposite sides of a meandered stream, made under existing rulings and practice, will not be disturbed . . . . . V. 14, p. 88
Survey, 3.
Military Reservations.
1. The statutory limitation of February 14, 1853, as to the amount of land that may be withdrawn for a military reservation, is only applicable within the territorial limits of Oregon . . . . . V. 14, pp. 146, 196
2. An executive withdrawal of lands for the purpose of a military reservation, in violation of the statute fixing the amount of land that may be withdrawn for such purpose, does not take such land out of the class of public lands so as to require their disposal by special enactment . . . . . V. 14, p. 133
3. In case of action under the second section of the act of July 5, 1884, the appraisers must take the oath of office, unite in examination and appraisement of the land, and submit their joint or several reports as to the thereof. . . . . V. 14, p. 159
4. An entry under the act of July 5, 1884, is not authorized without settlement prior to January 1, 1884, and continuous occupation thereafter. . . . . V. 14, p. 158
5. The establishment of the military reservation upon these lands did not defeat or impair the trust imposed by the treaty of 1865, but operated as a postponement of its execution . . . . . V. 14, p. 230
6. An act to release unto the City of San Antonio, Texas, certain portions of the military reservation near said city . V. 14, p. 68
Private Lands, 18; Railroads, 10; School Lands, 7.
Mille Lac Indians.
Indian Lands, 16.
Millsite.—*See Mines.*
Mines, 18.
Mines and Minerals.
1. The mineral entry of a deputy mineral surveyor within the district for which he is appointed is not in violation of any statute or departmental regulation, but particular care should be exercised if the allowance of such entries . . . . . V. 14, p. 151
2. It is a prerequisite of location, and consequently of entry, that mineral shall be actually discovered within the limits of a mining claim on the public domain. Its existence cannot be presumed . . . . . V. 14, p. 162
3. When mineral is discovered on land after the tract has been embraced in a homestead entry, only twenty-five feet on each side of a vein can be embraced in a mining claim. Unless for the purpose of saving the expense of a segregation survey, the homestead claimant shall allow ten acres or twenty acres to be embraced thereby . . . . . V. 14, p. 283
4. The mineral character of the land as a present fact is an essential matter of proof where it is sought to defeat an agricultural entry upon land returned as subject thereto. V. 14, p. 212
5. Sections sixteen and thirty-six appearing as mineral at date of survey do not pass under the grant, but the State is entitled to indemnity therefor . . . . . V. 14, p. 260
6. After a hearing has been held to determine the character of land embraced within a homestead entry, it is the province not of the local officers but of the Commissioner of the General Land Office to issue instructions in regard to a segregation survey of a mineral claim therein . . . . . V. 14, p. 283
7. The selection and location of lands known to be mineral might be properly vacated; but the right to select other land in lieu thereof would be barred, unless made within the statutory period . . V. 14, p. 133
8. In case of hearing ordered under mineral circular of October 31, 1881, the provisions of the Rules of Practice, with respect to appeal, must be followed V. 14, p. 97
9. Burden of proof, in this case, rests on the agricultural claimant, but he may show that he has improved the tracts and used them for agricultural purposes, and that "there have been no valuable mines of gold, silver, cinnabar, or copper discovered thereon." V. 14, p. 257
10. Improvements, made outside the surface boundaries, may be considered in determining whether the law requiring the expenditure of five hundred dollars on the claim has been complied with, where it appears that such improvements were made to facilitate the extraction of ore from said claim, and are not included in improvements upon any other claim . . . . . V. 14, p. 209
11. Alien Tenure Act in relation to Mines and Mining corporations . . . V. 14, p. 126
12. In the absence of a clear showing of possessory right an application for patent must be denied . . . . . V. 14, p. 223
13. The requirement of a statute that a claim upon surveyed land must conform to the legal sub-divisions as nearly as practicable,

must be construed to mean that such claims must conform to the survey as nearly as *reasonably* practicable . . . . . V. 14, p. 210

14. The provisions of circular N, of May 11, 1885, are extended to all cases in which the application for patent was filed and publication commenced prior to the receipt by the Register and Receiver of circular N, of December 4, 1884 . . . . . V. 14, p. 7

15. An application for patent or the survey of a claim may embrace several contiguous locations . . . . . V. 14, p. 151

16. In accordance with statutory requirement, the survey should exhibit the boundaries and conflicts of each location covered by the application . . . . . V. 14, p. 151

17. The uncontroverted finding of the surveyor-general that a claim has not been located or in any manner satisfied, shall be taken as satisfactory proof of such fact. V. 14, p. 79

18. An entry made on application covering a lode claim and contiguous millsite, where the proof shows full compliance with the law, except in posting on the millsite portion of the claim, may be confirmed by the Board of Equitable Adjudication, in the absence of an adverse claim, and where the formality was the result of an honest mistake . V. 14, p. 52

19. Failure to comply with local mining regulations may be shown by protest or adverse claim, but does not afford ground for proceeding against the patentee by the government where no conflict with the general law appears . . . . . V. 14, p. 151

20. An adverse claimant should not be required to describe his claim with more particularity than is the applicant for patent. Where a placer claim embraces and is described by legal sub-divisions, the adverse claimant should not be required to furnish a plat and certificate of a deputy mineral surveyor. Notwithstanding the adverse claimant did not furnish a certified copy of his location notice within the period of applicant's publication of notice, he is allowed to commence proceedings in court . . . . . V. 14, p. 237

21. The beginning of a suit in court on an adverse claim filed against an applicant for patent does not annul the jurisdiction of the Register and Receiver on the question of annual assessments, and abandonment of the claim. The evidence at the hearing before the local officers shows abandonment, as mere visits to the claim and "prospecting around" do not constitute labor and development as contemplated by the mining laws. V. 14, p. 238

22. Right to follow outcrop into adjoining mining claim—limits and boundaries. V. 14, p. 147

Affidavit, 2; Notice, 2; Private Land, 6; Publication, 13, 14; School Lands, 3, 4; Timber Lands, 8.

Minor.

A minor cannot make private cash entry. V. 14, p. 133

Montana.

Railroads, 11, 12.

Mortgage.

1. The intention to mortgage the land, after the issuance of final certificate, for the purpose of securing the purchase price thereof, does not invalidate the final proof. . V. 14, p. 138

2. There is no law or ruling of the Department now in force, that prohibits a preemptor, who has complied with the law in good faith from mortgaging his claim to procure money for the purpose of making final proof and payment . . . . . V. 14, p. 286

3. An assignee or mortgagee may file in the local office, under oath, a statement showing his interest in a pending entry, and have the same noted of record, and thereafter he will be entitled to notice of any adverse action on said entry . . . . . V. 14. p. 87

4. Where an entryman executed a mortgage to secure a loan on the day his final certificate was issued, he will not be allowed to relinquish his entry for the purpose of defrauding the mortgagee. The mortgagee may show at a hearing that the entryman has fully complied with the law . . V. 14, p. 197

5. A new hearing will not be accorded the mortgagee of an entry canceled on contest, unless it is clearly shown that the former proceedings were irregular, or that the evidence then submitted was false and unreliable. V. 14, p. 147

Proof, 20; Residence, 11.

Name.

Amendment, 5.

Naturalization.

As claimant has apparently acted in good faith, and a commutation of homestead entry partakes of the nature of a pre-emption entry, the question of citizenship involved will be submitted to the Board of Equitable Adjudication . . . . . V. 14, p. 98

Alien; Citizenship.

Nebraska.

An Act for the relief of settlers and purchasers of lands on the public domain in the States of Nebraska and Kansas . V. 14, p. 69

Public Notice, 1.

Newspaper.—*See Publication.*

New York Indians.

Indian Lands, 17.

No Man's Land.

1. Status of . . . . . V. 14, p. 62

2. Settlers may occupy the tract of public land south of Kansas known as No Man's Land; but there is no authority anywhere for making entries of their claims. Further, there appears to be no legal redress for crimes committed within the limits of this tract of country . . . . . V. 14, p. 11

Northern Pacific R. R.

Indian Lands, 12; Railroads, 8, 68, 107.

Notary Public.

1. Powers of notaries public are defined by local law . . . . . V. 14, p. 73

2. The certificate showing the official character of a notary public should be made by the clerk of the court in which the appointment appears of record, or the officer in charge of the records containing such appointment. V. 14, p. 222

3. The attestation of a notary public to the execution of a bond, where authorized, imports the same verity as the attestation of a clerk of a court of record . . . V. 14, p. 222

Affidavit; Timber Culture, 2.

Notice.

1. The notice given by settlement or improvement extends only to the quarter sections as defined by the public surveys. V. 14, p. 155

2. Notice of application for patent should give the course and length of a line connecting the claim with a corner of the public surveys or with a mineral monument. V. 14, p. 115

3. In the absence of proper service of notice, jurisdiction is not acquired. V. 14, p. 233

4. The only pre-requisite required by law to give the local office jurisdiction is "due notice to the settler" . . . . . V. 14, p. 249

5. The record must show affirmatively all matters of notice requisite to confer jurisdiction . . . . . V. 14, p. 150

6. A non-resident will not be heard to say that due diligence was not used to secure personal service . . . . . V. 14, p. 16

7. When service of notice by publication is properly made the defendant is as much bound thereby as though the service had been personal, and cannot be heard to allege want of actual notice . . . . . V. 14, p. 115

8. When notice is required to be given by different forms and modes to cover the same period, notice by either of the different modes will not run against an adverse claimant until given by each mode and form required. V. 14, p. 27

9. Where a registered letter is delivered to a party other than the addressee, that fact is sufficient under the post office regulations to show that he was authorized to receive such letter . . . . . V. 14, p. 113

10. Mailing notice of appeal and specification of errors by registered letter, within said period of seventy days, is proper service under Rule 96 of Practice . . . . . V. 14, p. 159

11. The transmission of notice by registered letter is *prima facie* evidence that it was received in due course by the party to whom it was addressed . . . . V. 14, p. 25

12. The written admission of the party to whom notice, by non-registered letter, was sent, that he received the same, is proof of service under Rule 95 of Practice. V. 14, p. 25

13. Claimants receiving notice of hearing, and absenting themselves without showing cause for such absence, are bound by the testimony submitted at said hearing. V. 14, p. 17

14. A large number of reports from local officers of hearings in contest cases are defective in failing to state what kind of notice was given by the Register and Receiver of their decisions, and whether or not any action has been taken by parties to the case. V. 14, p. 97

15. That the original notice of contest, instead of a copy, was left with the entryman, constitutes no valid objection to the service. V. 14, p. 85

16. How notice of testimony by deposition shall be served . . . . . V. 14, p. 147

17. The heirs of a deceased entryman are entitled to notice in case of contest against the entry, and the service of such notice must be affirmatively shown by the contestant. V. 14, p. 150

18. When notice of making final proof is given, it is essential that such proof should be taken at the time and place, and before the officer, specified in such notice . V. 14, p. 175

19. Notice that final proof will be taken "before the judge or clerk of court of record in and for —— county" is not definite when the judge or clerk of "district court" is intended. . . . . V. 14, p. 222

20. An appearance entered by an attorney is general in the absence of expressed limitation, and if authorized by the defendant cures any irregularity in the service of notice. V. 14, p. 221

21. A case should not be dismissed without notice, and prior to the day set for hearing. V. 14, p. 222

22. In the absence of proof to the contrary, it will be presumed that notice sent by mail from the General Land Office to non-residents was received at the expiration of fifteen days from date of mailing. . . V. 14, p. 189

23. When notice of the Commissioner's decision is given through the mails by the local office, seventy days are allowed from the day when such notice is mailed, within which to file appeal, and this whether appeal is filed through the mails or otherwise . V. 14, p. 158

24. In the absence of proof to the contrary, it will be presumed that notice sent by mail from the General Land Office to non-residents was received at the expiration of fifteen days from date of mailing . . . V. 14, p. 227

25. After the time for argument has passed, a case before the Secretary may be made special, and notice of the motion to so advance the case on the docket need not be served on the opposite party . . V. 14, p. 115

26. It is a valid objection to the notice of appeal and argument that the copies thereof, furnished opposite counsel, are not legible. V. 14, p. 17

Administrator, 2; Appeal, 28, 29; Attorney, 5; Contest, 19; Mines, 20; Mortgage, 3; Patent, 5; Pre-emption, 9; Preference Right, 1; Proof, 7, 15; Publication; Railroads, 75; Rehearing, 2; Transferees, 1.

Omaha Indians.

Indian Lands, 18.

Oregon.

Military Reservation, 1; Railroads, 8, 9.

Osage Lands.

1. By filing Osage declaratory statement and perfecting entry thereunder in accordance with the act of May 28, 1880, the right of pre-emption to such, or any other lands, is thereby exhausted . . . . . V. 14, p. 89

2. Failure to submit final proof within six months after Osage filing, as required by the regulations of the Land Department, renders

the claim thereunder subject to any valid intervening right . . . . . V. 14, p. 169

3. The Osage Indian trust and diminished reserve lands are subject to sale to parties having the qualifications of pre-emptors on the public lands . . . . . V. 14, p. 58

4. That portion of the Fort Dodge military reservation which embraced Osage trust lands and was relinquished by the act of December 15, 1886, became subject, by such relinquishment, to disposal under the act of May 28, 1880, which requires the purchaser to be an actual settler and possess the qualifications of a pre-emptor . . . . . V. 14, p. 230

Pre-emption, 10.

Patent.

1. Patent may issue in the name of the original locator, and be delivered to a trustee named by the parties, on the receipt from him of the amount required and due showing of his authority to act in the matter. . V. 14, p. 278

2. An outstanding patent, issued on an entry entitled to confirmation by the Board of Equitable Adjudication, should be returned and canceled before such confirmation. V. 14, p. 279

3. Section 2427 of the Revised Statutes authorizes the issuance of patent only in case of claims confirmed by statutory enactment, and where the confirmatory statute made no provision for patent. . . . . V. 14, p. 168

4. By the issuance of patent the Department is divested of all authority or control over the land or the title thereto. V. 14, p. 158

5. In a suit by the United States to cancel a patent of public land, the burden of producing the proof and establishing the fraud is on the Government, from which it is not relieved, although the proposition which it is bound to establish may be of a negative nature. V. 14, p. 262

6. To a bill in equity to cancel a patent of land from the United States to a pre emptor, solely on the ground that there was no actual settlement and improvement on the land, as falsely set out in the affidavits in support of the pre-emption claim, the defense of a *bona fide* purchaser without notice is perfect. V. 14, p. 262

7. While courts of equity have the power to set aside, cancel, or correct patents or other evidences of title obtained from the United States by fraud or mistake, and to correct under proper circumstances such mistakes, this can only be done on specific averments of the mistake or the fraud, supported by clear and satisfactory proof . . . . . V. 14, p. 37

8. Suit to vacate a patent on behalf of an alleged prior settler is not advised, it appearing that he has an adequate remedy if his allegations are true of priority . . V. 14, p. 155

9. The report of the special agent, to constitute sufficient ground for the recommendation of suit to vacate a patent, should, when not resting on the personal knowledge the agent, be supported, if obtainable, by at least two affidavits of persons having a personal knowledge of the facts relied upon to secure the vacation of the patent . . V. 14, p. 279

10. Proceedings to set aside a patent will not be recommended where it is shown that the applicant in such proceedings failed to comply with the requirements of the law, and did not assert his rights at the proper time. V. 14, p. 10

11. An application for suit to set aside patent, resting on a questionable pretense of title, and devoid of equity, will not be entertained . . . . . V. 14, p. 286

12. Suit to set aside a patent will be instituted by the government where it, though without interest, is under obligation to protect the title of third parties, who have no remedy except through such intervention. V. 14, p. 158

13. In a proceeding in equity against an innocent purchaser to set aside a patent of public land for fraud, in which it is charged that an officer of the United States, who was concerned in its issue, participated, the burden of establishing his title is not cast upon the defendant by raising a suspicion, however strong, of the alleged fraud and wrong-doing of the officer, if the officer could have been examined and was not . . . . V. 14, p. 262

14. The lands not earned under the grant, but for which patent was illegally issued, having been relinquished by the State, are restored to the public domain and opened to entry and settlement . . . . . V. 14, p. 139

15. Inasmuch as the final proof shows compliance with law the patent may issue, although the land was sold before the issuance of final certificate . . . . . V. 14, p. 212

Adverse claim, 1; Commutation, 8; Desert, 14; Entry, 4; Hearing, 4; Indian Lands, 8; Mines, 14, 19; Private Land, 9, 12; Railroads, 21, 30, 69, 70, 80, 87, 95, 96, 109; Residence, 3, 19; Survey, 5; Transferees, 4.

Payment.

Proof, 9.

Placer.

Mines, 13, 20.

Plat Book.

Entry, 5; Fees, 2; Mines, 20; Proof, 10.

Possession.

Mines, 12.

Posting.

Notice; Publication.

Poverty.

1. Where a residence has been established and the final proof shows good faith, poverty will excuse absences to secure the means of subsistence; six months' residence is not required in all cases prior to final proof. V. 14, p. 118

Commutation, 6, 7; Residence, 14, 15; Special Agent, 2.

Practice.

1. Where the right of substitution is dependent upon a determination as to which one of two applicants is the rightful "party in interest," and that matter can only be settled in the courts, no award of the right will be made by the Department . . . V. 14, p. 278

2. Statutory rights are not abridged by departmental regulations . . . . V. 14, p. 223

3. A ruling of the Department as to the

status of a tract of land, on the application of a pre-emptor, will not preclude the subsequent consideration of the same question on the application of the same person under another law . . . . . V. 14, p. 157

4. A decision made by the Acting Commissioner of the General Land Office must be treated as if made by the Commissioner himself, for the law provides that the Assistant Commissioner shall act as Commissioner in the absence of that officer . . . V. 14, p. 51

5. A final decision against a right asserted under the pre-emption law is no bar to claim by the same person for the same land under a different law . . . . . V. 14, p. 156

6. In the disposition of a case the Land Department is not confined solely to the consideration of the questions put in issue by the parties, but may take such action as the facts before it may require for the proper protection of the interests of the government. V. 14, p. 156

7. A departmental decision, while unreversed, is binding upon all subordinate tribunals . . . . . V. 14, p. 260

8. An expression of opinion by the Commissioner of the General Land Office as to the validity of an entry pending before the local office is not such a decision as will preclude said Commissioner, or his successor, from a full examination of the case when reached in its regular order . . V. 14, p. 223

9. There is no authority for the Commissioner of the General Land Office to review a final decision of his predecessor, but the Department, by virtue of its supervisory authority, may correct any error apparent on the record . . . . . V. 14, p. 137

10. The second exception to Rule 48 of Practice is only applicable when it appears that the decision of the local office is "contrary to existing laws and regulations" as to the rights between the claimant and the government, and not with respect to the preference rights of others . . . . . V. 14, p. 150

Appeal; Attorney; Contest; Mines, 8; Proof; Rehearing; Review.

Pre-emption.

1. The statutory oath required of a pre-emptor is not applicable to an entry under the act of May 28, 1880 . . . . . V. 14, p. 156

2. If the pre-emptive right has once been exercised there is no power, save in Congress, to authorize the exercise of the privilege again by the same person . . . V. 14, p. 139

3. The preference right of purchase acquired by settlement, residence and filing, constitutes the nature and substance of a pre-emption claim, and subsequent absence from the land does not necessarily defeat such claim . . . . . V. 14, p. 157

4. The prior settlement of a pre-emptor, who fails to file in time, is not protected as against the next settler in point of time who has complied with the law . . . V. 14, p. 286

5. Initiation of claim prior to government survey, extent of cultivable land falling within the lines of the claim as finally surveyed, and valuable improvements of each subdivision, considered sufficient reasons for waiving the requirement of approximation. V. 14, p. 98

6. When a pre-emptor applies to file a declaratory statement for land embraced in an entry of record, alleging settlement prior to date of such entry, the proper practice is to order a hearing to determine the respective rights of the parties . . . . . V. 14, p. 155

7. A settlement right, sufficient under the pre-emption law for the maintenance of a claim, existing at the date when the grant became effective, defeats the operation thereof, though such right was subsequently abandoned without legal assertion V. 14, p. 203

8. To show that under a pre-emption-claim, which had attached before definite location, actual habitation had ceased prior thereto, does not establish the fact that the preference right of purchase did not then exist and except the land from the grant . . V. 14, p. 157

9. Acts of settlement which do not serve to give notice of the settler's claim are of little importance under the pre-emption law. V. 14, p. 155

10. The right to make pre-emption filing can be exercised but once, and such right is exhausted though the filing is subsequently transmuted to a homestead entry. V. 14, p. 156

11. Application for restoration of right to file for or enter land should not be considered, unless accompanied by application for some specific tract . . . . . V. 14, p. 52

12. A second pre-emption filing is contrary to law and will not be allowed, notwithstanding equitable considerations . . V. 14, p. 128

13. An application for land not intended to have been embraced within the original application cannot be properly allowed as an amendment. . . . . V. 14, p. 139

14. A second filing is permissible under the law when the first was ineffectual on account of a prior adverse claim . . . V. 14, p. 139

15. A second filing allowed where the first was illegal for want of settlement, and the allegations therein with respect to settlement were made in good faith . . . V. 14, p. 202

16. Where a qualified party made a pre-emption filing on land subject thereto, but derived no benefit therefrom, he cannot be allowed a second filing. The fact that he did not see the land embraced in his first filing does not render the filing illegal, and is no excuse for a second filing . . . V. 14, p. 128

17. By section six of the act of March 3, 1853, the right to file a second time was only recognized where the first filing had been made prior to the passage of that act. V. 14, p. 128

18. The right of a pre-emptor to purchase is not defeated by the adverse claim of a homesteader, who alleges residence within less than six months after entry, and fails to show the same . . . . . V. 14, p. 19

19. In the enforcement of the inhibitory provision that denies the right of pre-emption to one "who quits or abandons his residence on his own land to reside on the public lands

in the same State or Territory," due consideration must be given the presumption of good faith that attends the exercise of legal rights . . . . . V. 14, p. 155

20. The evidence does not show that the entryman removed from land of his own in the same territory, to the pre-emption claim in question . . . . . V. 14, p. 188

21. The fact that an intending pre-emptor divests himself of the title to land, upon which he is then residing, on the very day on which he alleges settlement on other land, is a circumstance sufficient to warrant a doubt as to his good faith . . . . . V. 14, p. 259

22. Before making pre-emption entry the claimant must show settlement, improvement and personal continuous residence upon the land in good faith for a period of not less than six months. Claimant in this case is allowed reasonable additional time within which to show compliance with the pre-emption laws . . . . . V. 14, p. 129

23. Prior to the act of July 14, 1870, the law fixed no limit within which a settler under the pre-emption law, on unoffered land, should make proof and payment . . . V. 14, p. 157

24. The pre-emption law does not specify the extent and value of the improvements required, and in view of the circumstances the slight improvements in this case are accepted as satisfactory . . . . . V. 14, p. 116

25. The pre-emptor resided on his claim from June 1, 1883, to March 12, 1884, except two weeks in November, on business, and one week in March, for medical attendance. His house is 8 by 12 feet, with window, door and floor. He has broken five acres. His cash entry is allowed to stand . V. 14, p. 251

26. In view of the good faith of claimant and her sickness, additional time is allowed her to show compliance with the pre-emption law . . . . . V. 14, p. 117

27. The pre emptor showed residence for nearly seven months—he broke one and a half acres, and cultivated a portion of it to a crop —his house is of logs, 12 by 20 feet, and his improvements are valued at $75. His entry is allowed to stand . . . . . V. 14, p. 251

28. Temporary absence in the discharge of an official duty, after a period of continuous residence greater than required by law, does not constitute abandonment . . V. 14, p. 259

29. The right of joint entry is accorded where the settlers prior to survey have placed improvements on the same legal subdivision, and the law does not prescribe the amount or character of the improvements to warrant such entry . . . . . V. 14, p. 166

30. On the death of a pre-emptor the entry will be made in favor of the heirs, and title inure to them generally, the Department not undertaking to say who they are. V. 14, p. 188

31. On the death of a pre-emptor his heirs may complete the entry at any time within the period allowed the pre-emptor . . V. 14, p, 4

32. A pre-emptor cannot, by devise, defeat the right conferred by statute upon the heirs. V. 14, p. 188

33. The entry by a pre-emptor of a portion of the land settled upon, and filed for, is an abandonment and relinquishment of the land not included in the final purchase. V. 14, p. 271

34. If the evidence shows that the law has not been complied with, and that the entryman by his own act has rendered further proof on his part impossible, the entry will be canceled, notwithstanding the plea of "hardship." . . . . . V. 14, p. 259

35. A pre-emptor who, in the presence o an adverse claim, elects to make final proof, must abide the result thereof, and submit to an order canceling his filing, in the event that his proof fails to show due compliance with the law . . . . . V. 14. p. 270

Citizenship, 2; Coal, 1, 3; Commutation, 9; Homestead, 7; Mortgage, 2; Naturalization; Osage, 1, 2, 3; Patent, 6; Practice, 3, 5; Proof; Publication, 2; Railroads, 18, 19, 25, 31, 32, 37, 56, 59, 62, 63, 67, 71, 75, 79, 84, 99, 100, 101, 102, 103, 104, 105, 107; Relinquishment, 4, 5; Residence; School Lands, 1; Settlement; Suit; Timber Culture, 13, 15; Timber Lands, 1, 2, 4, 5; Townsite, 2.

Preference Right.

1. The right of a successful contestant should not be defeated by a charge of having wilfully attempted to mislead the local officers in a matter affecting their jurisdiction, where such charge was in substance ignored by the local officers and the case continued for further service of notice . . . . . V. 14, p. 282

2. A contestant who begins a contest fo the purpose of selling his preference righ thereunder, gains no preference right by such contest . . . . . V. 14, p. 2

3. A preference right of entry is accorded to one who by the initiation of contest secures the cancellation of a desert land entry. V. 14, p. 143

4. No preference right is gained by settling upon land covered by an uncanceled entry, and purchasing the improvements from the entryman . . . . . V. 14, p. 175

5. Proceedings where a successful contestant on applying to make entry within the thirty days allowed him finds that some one else has meantime made entry of the same land . . . . . V. 14, p. 74

Contest, 1, 4, 5; Practice, 10; Pre-emption, 3, 8.

Private Entry.

1. Land within the limits of the official survey of a private claim, in excess of the amount affirmed and patented, is not subject to private cash entry; and can only be disposed of after the survey has been duly amended . . . . . V. 14, p. 145

Private Lands.

1. In the case of a private land claim owned by different parties where the interests therein are separate, divisible and determinate, scrip may issue to any one of the owners to the amount of his determined interest therein. V. 14, p. 158

2. The claim in question having been confirmed by the Board of Commissioners, is

held to have been confirmed by Congress within the meaning of this act . V. 14, p. 253

3. There is no objection to the front locations of the McDonogh claims on the Mississippi river, nor as to their validity. V. 14, p. 108

4. Side lines, direction and extent of land claims founded on complete grants of former government are good in themselves, and require no confirmation by the government of the United States to give them validity. V. 14, p, 108

5. An order reversing the decision of the Commissioner of the General Land Office, in the matter of the survey of a private land claim, is properly within the jurisdiction of the Secretary of the Interior . . V. 14, p. 158

6. The Department has no authority to cancel a selection and location, made within the period prescribed, of non-mineral land, or land not known to be mineral. V. 14, p. 133

7. A petition for the re-opening of a case involving application for scrip in satisfaction of a private land claim, should be addressed to the Commissioner of the General Land Office or the Surveyor-General, if the case in fact is not *res judicata* . . . . V. 14, p. 289

8. There is no power or authority in the Department, on failure of the claimants to make selection and location within the period designated by the statute, to remove the limitation, and authorize a selection and location thereafter . . . . . V. 14, p. 133

9. Review of the several acts of Congress touching private land claims or concessions in Florida under the British and Spanish governments. The claim in question was confirmed by Congress, and patent will issue in a proper survey thereof . . . V. 14, p. 121

10. A claim of land in Florida and Louisiana, based upon occupation, habitation, and cultivation, under the former government in sovereignity over the country, is a private land claim and included within the third section of the act of June 2, 1858 . V. 14, p. 158

11. Adhering to the former departmental ruling, it is held that the grant under which the company claims is a complete French grant, needing no confirmation; and that it is the duty of the Department to recognize the validity of such title so far as to direct that the public surveys be closed upon the lines of said grant . . . . . V. 14, p. 277

12. Under the treaty of 1803, the United States acquired no title to land included within a complete French grant, and consequently could now convey none by patent. V. 14, p. 168

13. In the location of a grant, the survey must follow the decree of confirmation and act of juridical possession, and parol testimony is not admissible therefor, except where there may be an ambiguity, or it is necessary to identify in the field the boundaries described in those instruments . . . . . V. 14, p. 158

14. A title resting on such basis is of the same validity and efficacy as one founded on a written permission to settle, or order of survey, or as any incomplete title . V. 14, p. 158

15. An unsatisfied claim for a specific quantity of land, founded on an order of survey made in 1795, with no specific location of the land, is a proper basis for the issuance of scrip under said act . . . . V. 14, p. 79

16. It does not satisfactorily appear that the grant of Governor Armijo of 1841 to Beaubien and Miranda, since ascertained to amount to 1,714,764.94 acres, was of that character which, by the decree of the Mexican Congress of 1824, was limited to eleven square leagues of land for each grantee. V. 14, p. 34

17. In establishing boundaries the survey must follow the calls of the decree of confirmation, and the officers of the Land Department have no authority to establish a different line agreed to by co-terminous owners. V. 14, p. 239

18. The military reservation, custom house, state house, and quartel were not granted to the city, or intended to be granted, and the decree of the Board, confirming said grant, only passed title in accordance with the laws, usages, and customs of the nation from which the claim was derived, and conferred no larger estate than the grant . . V. 14, p. 239

19. In following calls, those mandatory, specific and most important must be gratified, even to the neglect or exclusion of the less peremptory and important . . V. 14, p. 158

20. When the field notes of survey have been made since the passage of the act of 1849, and with reference thereto, they will be held to entitle the State *prima facie* to the lands returned as swamp and overflowed, without the additional words, "made unfit thereby for cultivation;" but where made before the passage of that act, all the descriptive words in the grant, or words clearly of like import, must appear, and where they do not appear, the State must show by other satisfactory evidence that the lands claimed are of the class contemplated by the grant . . . V. 14, p. 65

21. This claim was confirmed to the legal representatives of Mrs. Prue—whether to her heirs at law or her representatives by contract, does not appear. A succession sale would not grant any interest in this claim to the purchaser, as she herself had no interest in the claim. The application of D. J. Wedge for indemnity scrip is accordingly denied. V. 14, p. 255

22. The extent of a settlement claim is fairly determined by the location of the improvements and the land described in the declaratory statement . . . . V 14, p. 227

23. The report of the Commissioners on Louisiana settlement claims makes no distinction between a claim founded on an order of survey where there is inhabitation and cultivation, and a claim in which these elements are lacking. The material questions under the act of June 2, 1858, are, "Has the claim been confirmed? If so confirmed, does it for any reason other than the discovery of fraud in it after confirmation remain unlocated and unsatisfied?" . . . . . V. 14, p. 253

Private Entry; Secretary, 2; Survey, 4.

Probate Judge.
Proof, 1, 2.
Proof.
1. Probate Judges in Dakota are qualified to take proofs, under the statute, in homestead and pre-emption cases . . . . V. 14, p. 51
2. Judges of Probate, in a majority of cases, act as attorneys for claimants. This reason is sufficient for refusing to order proof to be taken in any case before any officer who so misuses the functions of his office.
V. 14, p. 52
3. Clerks of court in Dakota, elected under the act of March 7, 1883, in counties where no court is held, are officers authorized to take final proof in homestead and pre-emption cases . . . . . V. 14, p. 14
4. It is the duty of the Register to designate the officer before whom proof in homestead and pre-emption cases is to be taken.
V. 14, p. 73
5. The word "district," as employed in the acts of March 3, 1877, and June 9, 1880, means *judicial* district, and not land district.
V. 14, p. 161
6. Improper identification of claimant.
V. 14, p. 26
7. When notice of making final proof is given, it is essential that such proof should be taken at the time and place, and before the officer specified in such notice.
V. 14, p. 161
8. Proof must be made on the day advertised, otherwise it will be rejected and new proof required . . . . . V. 14, p. 175
9. The submission of final proof prior to payment under the practice then existing in the local office and in view of the explanation given and the acceptance of claimant's money, should not defeat the consideration of such proof . . . . . V. 14, p. 153
10. The right to submit final proof recognized, pending suspension of the township plat; it appearing that the survey is substantially correct, that the lines of the section involved will not be changed, and that the settler may not be able to make final proof in the event of further delay . . . V. 14, p. 82
11. In view of the testimony submitted at the hearing in this case, the final proof on Lapham's homestead entry is rejected.
V. 14, p. 248
12. The failure of the Register to date and sign the jurat attached to the final proof should not defeat the consideration of said proof, it having been regularly submitted, sworn to before the Register, and approved by the local office . . . . . V. 14, p. 162
13. The approval of final proof, and issuance of certificate thereon by the local office, in no way limits the authority and jurisdiction of the Department over the entry.
V. 14, p. 249
14. A decision of the General Land Office rejecting final proof and holding the entry for cancellation is a final action from which no appeal will lie . . . . . V. 14, p. 150
15. On the rejection of the final proof offered by two pre-emptors for the same tract, without according priority to either, both may be allowed, in the absence of bad faith, to submit new proof after due notice.
V. 14, p. 270
16. When final proof is offered for land covered by an adverse selection, the party making such selection is entitled to special citation . . . . . V. 14, p. 157
17. Settlers who are compelled to leave their lands on account of loss of crops must be prepared to account for their absence, and final proof should not be offered until the law has been fully complied with . V. 14, p. 115
18. Permanent absence from the land immediately following final proof, offered in the presence of an adverse claim, and prior to the issuance of final certificate, indicative of bad faith . . . . . V. 14, p. 17
19. A transferee after entry and before patent, though entitled to be heard on the sufficiency of the final proof, is in no better position with respect thereto than the original entryman . . . . . V. 14, p. 88
20. The sale or encumbrance of the land after final proof brings no new element into the case when the validity of the entry is under consideration, though the purchaser or mortgagee is accorded the right to show that the entryman had in fact complied with the law. There is no authority of law for the substitution of the mortgagee in the place of the entryman . . . . . V. 14, p. 250
21. That a supplemental affidavit, filed nearly a year after the acceptance of proof and issuance of certificate by the local office, shows the claimant absent from the land, is not in itself evidence of bad faith.
V. 14, p. 213
22. If she will furnish the affidavit of the officer before whom she made final proof, that said proof was duly made and was lost by him or the local land officers, or in transmission from his office to the local land office, and that said proof was lost by no fault of hers, then new proof without new publication will be received in lieu of said lost proof.
V. 14, p. 257
23. In all final homestead, pre-emption and commutation cases hereafter, where final proof is made subsequent to the date advertised, and within a reasonable time, and the delay is caused by circumstances beyond the control of the claimant, the proof being in other respects satisfactory, you will require the claimant to file his affidavit, duly corroborated, setting forth in full the cause of delay.
V. 14, p. 282
24. In case of publication of improper notice for final proof, which is largely the fault of the Register, new advertising will be required, but new proof need not be submitted unless a protest or adverse claim is submitted, when proof will be required of compliance with law up to the date of the certificate already issued . . . . . V. 14, p. 222
25. New final proof may be submitted showing compliance with the law up to the date when the former proof was made, though compliance subsequently thereto can-

not be shown, it appearing that through no fault of the claimant said proof did not show all the material facts . . . . . V. 14, p. 186

26. In the absence of a legal intervening settlement claim, there is no penalty for failure to make proof and payment, for unoffered land, within the statutory period . V. 14, p. 19

Appeal, 2, 7; Application to Enter; Commutation; Homestead, 9, 13, 14, 17, 22; Improvements, 2; Mines, 4, 17, 18, 20; Mortgage, 1, 2; Notice; Osage, 2; Patent, 7, 15; Poverty; Pre-emption, 34, 35; Publication; Special Agent, 1; Wife, 5; Widow; Woman, 2.

Protestant.

Appeal, 27; Contest, 27; Mines, 19.

Publication.

1. The publication is not sufficient if the notice does not appear in every copy of the paper of each issue for the statutory period. V. 14, p. 210

2. Six weeks' publication of notice of intention to make proof under act of March 3, 1879, homestead, commuted homestead, pre-emption, timber culture, and desert land entries, and all entries requiring homestead or pre-emption proof. In timber and stone entries, you will require ten weekly insertions before proof is taken or allowed . V. 14, p. 24

3. Notices should be inserted in the newspaper only which has a general *bona fide* circulation in the vicinity of the place where it is published. . . . . V. 14, p. 126

4. The Register shall designate a newspaper published nearest the land. If two or more newspapers are published in the same city or town, the Register may select the one in which to publish, and of permanently established papers with a general circulation, he should select the one charging the lowest price for said publication . . . V. 14, p. 138

5. The requirement that publication of notice shall be made in the paper nearest the land described in the application, is in accordance with the manifest purpose of the law, and must be observed in the submission of final proof. . . . . V. 14, p. 26

6. Notice by publication includes posting of notice upon the land in contest, and if such posting is omitted, the notice is incomplete and jurisdiction is not acquired . V. 14, p. 150

7. Service by publication of notice is authorized on due showing that personal service cannot be made . . . . . V. 14, p. 16

8. It is not essential to allege as basis for publication of notice that personal service cannot be had "within the State" . V. 14, p. 115

9. In service by publication, notice by registered letter is an essential, without which jurisdiction is not acquired, and must be given within the time required by the Rules of Practice . . . . . V. 14, p. 221

10. The sufficiency of publication of final proof notice must be determined by the regulations in force when such advertisement is made. Under the circular of October 1, 1880, the notice of final proof was sufficient if published weekly five times . . . V. 14, p. 269

11. Final proof having been submitted without protest, after due notice, further advertisement is not required where supplemental proof is called for by the General Land Office . . . . . V. 14, p. 285

12. More final proof should not be advertised on a given day than can be properly attended to . . . . . V. 14, p. 52

13. Though proper publication may not be secured within less than sixty-three days, the posting in the said local office is sufficient if it it covers sixty days of that period. V. 14, p. 27

14. If notice is posted in the local office the first day of publication, an adverse claim should be filed within sixty days from that date; but if such notice is not posted until three days thereafter, an adverse claim may be filed on the last day of publication. V. 14, p. 27

15. Publication of a notice is not required the act of July 1, 1864, in case of a corrected survey made under an order therefor. V. 14, p. 158

Mines, 14, 20; Notice; Proof; Survey, 5.

Public Notice.

1. No. 912. Mar. 3, 1887. Establishment of Buffalo Land District, Wyoming. V. 14, p. 291

2. April 20, 1887. The enlargement of the Hailey Land District, Idaho . . V. 14, p. 60

3. No. 913. Jan. 4, 1888. Change of boundaries of Lake City, Gunnison, etc., Land Districts, Colorado . . . . . Y. 14, p. 291

4. September 30, 1886. Establishment of two additional Land Districts in the State of Nebraska . . . . . V. 14, p. 59

Quarter Section.

Notice, 1; Settlement, 3; Survey, 1; Timber Culture, 9.

Railroads.

1. An act to grant the right of way through the Indian Territory to the Chicago, Kansas and Nebraska Railway, and for other purposes . . . . . V. 14, p. 45

2. An act to authorize the Fort Worth and Denver City Railway Company to construct operate a railway through the Indian Territory, and for other purposes . . V. 14, p. 45

3. An act to authorize the Fremont, Elkhorn and Missouri Valley Railroad to build its road across the Fort Meade Military Reservation . . . . . V. 14, p. 69

4. An act to grant the right of way through the Fort Bliss Military Reservation to the Rio Grande and El Paso Railroad Company. V. 14, p. 44

5. The grant of May 12, 1864, to the State of Iowa, to aid in the construction of the two railroads named therein, was a grant in place, and of a moiety for each road within the common granted limits, and no indemnity can be allowed either road for lands lost by reason of the moiety granted to the other. V. 14, p. 139

6. An act to grant the Maricopa and Phœnix Railway Company, of Arizona, the right of way through the Gila River Indian Reservation . . . . . V. 14, p. 68

7. An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm

title to certain lands, and for other purposes. V. 14, p, 68

8. By the joint resolution of May 31, 1870, there was conferred upon the Northern Pacific a grant of lands for the line of its road from Portland to Puget Sound . . . V. 14, p. 273

9. The grant made by the act of March 4, 1870, for the construction of a railroad from Portland to Astoria, and from a point of junction near Forest Grove to McMinnville, in the State of Oregon, was in effect a grant for the construction of two roads. V. 14, p. 156

10. An act granting the right of way to the Prescott and Arizona Central Railway company across the Whipple barracks Military Reservation in Arizona . . . . V. 14, p. 69

11. An act granting to the Rocky Fork and Cooke City Railway Company the right of way through a part of the Crow Indian Reservation in Montana Territory . V. 14. p. 47

12. An act granting to the Saint Paul, Minneapolis and Manitoba Railway Company the right of way through the Indian reservations in Northern Montana and Northwestern Dakota . . . . . V. 14, p. 68

13. The act of June 20, 1874, was passed in the interest of commerce and transportation, having relation solely to the management and traffic of the Union Pacific system, and did not contemplate or effect any change in the grant of lands . . . . . V. 14, p. 275

14. An act granting a right of way through certain public lands of the United States in the Territory of Utah, and for other purposes. V. 14, p. 46

15. An act granting the Utah Midland Railway Company the right of way through the Uncompahgre and Uintah Reservations, in the Territory of Utah, and for other purposes . . . . . V. 14, p. 69

16. The status of land entered in accordance with this section is not changed by the subsequent passage of an act reviving the grant and extending the time for the completion of the road . . . . . V. 14, p. 286

17. As under the grant the two roads named therein were required to intersect at a given point, a map showing the location of one of said roads before such point of intersection could be ascertained, must be held as indicating a preliminary line, and not debarring a change of location, if made necessary in order to comply with statutory requirements as to course and direction. . . V. 14, p. 189

18. The settlement of a qualified pre-emptor, though unprotected by a filing, is sufficient to except a tract from the grant to this company. . . . . V. 14, p. 167

19. The rule of adjustment adopted by the Department in the matter of settlement rights acquired on lands lying along Goose river, which formerly constituted the northern boundary of the "Indian country" claimed by the Wahpeton and Sisseton Sioux, recognizes that legal settlement north of said stream draws to it, on release of the Indian title, the constitutent portion of the legal subdivision on which it was made . . . . V. 14, p. 142

20. The claim of Azusa Rancho was *sub judice* until patent issued thereon, and land within the claimed limits thereof in reservation until that date . . . . . V. 14, p. 118

21. It is the duty of the Secretary of the Interior to issue patents to said Company whenever they have filed in the Department satisfactory evidence of full compliance with the act of February 8, 1887 . . V. 14, p. 99

22. The words "expiration of such grant," as used in said section, refer to the expiration of the time within which the road, by the terms of the statute, should have been constructed, and not to the forfeiture of the grant by legislative or judicial proceedings. V. 14, p. 286

23. Except on the final completion of the whole road, there is no authority under the grant for patenting lands without the governor's certificate that ten consecutive miles of road have been completed in a good, substantial and workmanlike manner. Vol. 14, p. 139

24. The actual road as made or located is the measure by which the locality and quantity of the grant are to be ascertained and determined. . . . . V. 14, p. 53

25. A grant is not held in abeyance to await the default of settlers, but title vests at once, and to the lands to which title does not at once vest, the claim of the company is at an end . . . . . V. 14, p. 30

26. The grant to the two roads was of a moiety for each road within the common granted limits, and neither road has any claim for indemnity on account of the moiety granted to the other . . . . . V. 14, p. 189

27. The lateral limits of a grant are determined by drawing lines on each side of the route of the road through a series of points, at the precise distance therefrom of the width of the grant, on tangential lines to arcs having a radius equal to the width of the grant on each side of the route. V. 14, p. 53

28. The line fixing the terminal limit of the grant should be run at right angles to the general course of the last section. V. 14, p. 28

29. Land appropriated at the filing of the map of general route, but released from such appropriation prior to definite location, is not held to await the same, but is open to the first legal applicant. The right to purchase under the act of June 15, 1880, existing at definite location, seems to expect the tract covered thereby from the operation of the grant. V. 14. p. 55

30. By the terms of this grant the road was divided for the purpose of boundary and patent into sections of twenty-five miles. V. 14, p. 28

31. A pre-emption claim, subsisting at the date of definite location, excepts the lands covered thereby from the grant to the Union Pacific . . . . . V. 14, p. 157

32. How a settlement claim is excepted from a railroad grant . . . . . V. 14, p. 157

33. The line of the road was definitely located when the Secretary of the Interior

notified the company of the receipt of the map showing the same and of his "consent and approval to the location of said road according to the map and profiles."
V. 14, p. 99

34. Rights acquired by such formal definite location were not affected by the report of the Commission, subsequently appointed, or the action of the department on said report.
V. 14, p. 99

35. The construction of the road and the filing of a map of definite location thereof did not cause the grant to attach to any particular tract of land, or withdraw from entry the lands within the limits fixed thereby . V. 14, p. 91

36. Any question as to actual construction on the line of definite location must be regarded as finally settled by the acceptance of the road as constructed, the adjustment of the grant, and the issuance of patents thereunder.
V. 14, p. 189

37. Land appropriated at the filing of the map of general route, but released from such appropriation prior to definite location, is not held to await the same, but is open to the first legal applicant . . . . . V. 14, p. 156

38. The joint resolution of April 10, 1869, fixed the common terminus of the Central Pacific and Union Pacific at or near Ogden, and required the former company to pay the latter for the construction of the road from said point to Promontory Summit. The Central Pacific thus became entitled to the granted lands between said points . . . V. 14, p. 99

39. The map showing the definite location of the road between Waldo and Tampa Bay was filed in 1860, but returned by the General Land Office for the Governor's certificate, and when refiled the time allowed for the completion of the road had expired, but it appearing that the map refiled was identical with the original map, which properly showed the location of the road, Secretary Schurz held that the right of the road was protected under the original map, and such decision is binding upon succeeding heads of the Department . . . . . V. 14, p. 157

40. By the terms of the act of May 12, 1864, patents were authorized on the governor's certificate that ten consecutive miles of road have been constructed, and lands so patented, for road actually built, were earned under the grant, though the whole line of road was not completed . . . V. 14, p. 189

41. By this system any point on the lateral limit will be distant the length of such radius from some point on the road as located.
V. 14, p. 53

42. If the call is plain and no particular course is prescribed, the shortest route, a straight line, must necessarily be adopted.
V. 14, p. 239

43. No lands were earned by the construction of a fractional part of a ten mile section, the governor's certificate not covering the same, and the whole road not being completed . . . . . V. 14, p. 139

44. No lands were earned by the construction of a fractional part of a ten mile section, the governor's certificate not covering the same, and the whole road not being completed . . . . . V. 14, p. 189

45. An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes.
V. 14, p. 70

46. Under such adjustment, the lands lying within the quadrant formed by the limit lines northwest of Forest Grove must be restored to the public domain . . . . . V. 14, p. 157

47. How the grant to the Chicago, St. Paul, Minneapolis & Omaha Railway Company should be adjusted. . . . . V. 14, p. 179

48. The act of March 3, 1887, is mandatory, and requires that there shall be no unnecessary delay in the matter of adjusting rights claimed under the various grants, and the revocation of certain indemnity withdrawals under the rules of May 23, 1887, was not intended to delay or suspend such adjustment . . . . . V. 14, p. 161

49. By the act of March 3, 1869, the grant in aid of the Denver Pacific was separated from that made for the benefit of the Kansas Pacific, and the adjustment of the grant for each road may therefore be made separately. It is accordingly held that lands south of the terminus of the first line at Denver, and west of the terminus of the second at the same point, should be excluded in said adjustment.
V. 14, p. 275

50. The act of March 3, 1887, authorizes and directs the Secretary of the Interior to immediately adjust in accordance with decisions of the Supreme Court each of the railroad land grants made by Congress to aid in the construction of railroads, and heretofore unadjusted . . . . . V. 14, p. 216

51. The final adjustment of the grant, however, will be deferred for the disposition of pending Congressional action with reference thereto. . . . . V. 14, p. 157

52. The forfeiture of the grant to the Atlantic and Pacific did not reinvest the Southern Pacific with the right, title and interest of which it was divested by the definite location of the Atlantic and Pacific, as the declaration of forfeiture expressly provided for the restoration of the forfeited lands to the public domain . . . . . V. 14, p. 274

53. Said act of forfeiture will be properly executed by adjusting the limits of the road between Portland and Forest Grove separately and then of the road between the latter point and McMinnville . . . . . V. 14, p. 157

54. The section under consideration is not unconstitutional, as it only protects entries made during a time when Congress might have properly dectared a forfeiture of the grant for breach of the condition subsequent.
V. 14, p. 286

55. The words of limitation in the act of forfeiture, approved January 31, 1885, save to the grant the full complement of lands granted for every mile of road actually constructed.
V. 14, pp. 156, 157

56. By definite location and indemnity

withdrawal under the additional grant of 1865, the lands covered thereby were excluded from entry and settlement. V. 14, p. 157

57. A settlement within the limit of the indemnity withdrawal for the benefit of this company, made prior to the passage of the joint resolution of June 28, 1870, is fully protected thereby . . . . . V. 14, p. 157

58. Under section 23 of the grant of March 3, 1871, lands embraced within the indemnity withdrawal for the Atlantic and Pacific Railroad were excepted from the grant to the Southern Pacific . . . . . V. 14, p. 118

59. As no vested right to any particular tract is conferred by indemnity withdrawal, and the existence of the same is dependent upon the will of the Secretary of the Interior, the Department may prescribe rules by which failure to assert the right of selection, as against a settler after withdrawal, will operate as a revocation thereof as to the tract involved. V. 14, p. 91

60. The order revoking indemnity withdrawals was not intended to affect rights of grantees within the primary limits of other Congressional grants, or rights acquired under certain other indemnity withdrawals, the status of which has not yet been determined. V. 14, p. 287

61. An application to make entry, though once rejected by final decision of the Department, on account of a prior railroad indemnity withdrawal, since revoked, may now be allowed, as no selection of the land was made by the company, to date from the time when the restoration takes effect . . V. 14, p. 260

62. Conceding that a valid settlement could not be made on land covered by a railroad indemnity withdrawal, as the land was not selected thereunder, there is no reason why the settler may not submit proof showing compliance with law after the revocation of said withdrawal . . . . . V. 14, p. 5

63. The withdrawal covering the tract in question having been revoked, and no selection by the railroad appearing, the tract is awarded to the settler . . . . V. 14, p. 218

64. An application rejected because of an existing indemnity withdrawal, and pending on appeal, may be allowed, where withdrawal is revoked, as of the date when the land became subject to such appropriation under the order of revocation . . . . . V. 14, p. 271

65. When by competent authority public lands have been withdrawn from private appropriation, they are not again subject to such appropriation until restored by like authority. No restoration taking place up to the time of selection for a railroad, and being in a state of reservation, the land so withdrawn is not subject to homestead settlement during the time between filing of plat of definite location and its selection, nor prior thereto from filing of map of general route, and no right, adverse to the claim of the company, is acquired by an alleged settlement thereon. V. 14, p. 5

66. An executive withdrawal is not effective until notice of same is received at the local office . . . . . V. 14, p. 91

67. The existence of a pre-emption claim, capable of being perfected, at the date of withdrawal on general route, excepts the land covered thereby from the effect of such withdrawal . . . . . V. 14, p. 75

68. A homestead entry made subsequently to the filing of the map of the general route of the Northern Pacific, but prior to the receipt of notice of withdrawal thereunder, is protected by the act of April 2f, 1876. V. 14, p. 206

69. There is no authority under the first section of the act of April 21, 1876, for the confirmation of entry and the issue of patent where the title has already passed from the government . . . . . V. 14, p. 156

70. Parties purchasing of a railroad subsequent to the act of 1866, and before the State receives the patent required by this act, do so at their own risk, as company sells on its own responsibility and has no title to convey. V. 14, p. 30

71. Under the act of April 21, 1876, a pre-emption settlement claim initiated after the map of general route was filed, but before notice of withdrawal therefor was received at the local office, is sufficient to except the land covered thereby from the operation of such withdrawal . . . . . V. 14, p. 217

72. Under the third section of the act of April 21, 1876, an entry, in other respects satisfactory to the Department, should not be rejected because of a prior withdrawal, if at the time of such entry the grant under which the withdrawal was ordered had expired by lapse of time . . . . . V. 14, p. 286

73. Land within the granted limits of a road not constructed within the required time, but definitely located and not forfeited by Congress, is not subject to the indemnity selection of another road . . . . V. 14, p. 75

74. Under the 3d Section of the granting act, after indemnity limits are fixed by definite location, a right to select lieu lands within such limits accrues to the railroad company, and the lands to which right of selection is limited, must be placed in reservation to adjust the grant and effectuate its objects. V. 14, p. 5

75. The right of selection within the indemnity limits is a preference right that may be asserted against every one, but failure to assert such right, after due notice of a settler's intention to make final proof for land within said limits, is a waiver of such right, and will, after proof and payment, estop the company from setting up the illegality on the entry . . . . . V. 14, p. 91

76. As the tract in question is in the indemnity limits, and not selected by the company, its protest is dismissed, and the entry concerned will be approved for patent in due course . . . . . V. 14, p. 18

77. The appropriation of land for a public purpose that has been, prior thereto, withdrawn as within the indemnity limits of a railroad grant, and its subsequent restoration to the

public domain, work a revocation of the withdrawal and leave the land open to the first legal applicant . . . . . V. 14, p, 157

78. Lands "in place" excepted from the grant are not subsequently subjected to indemnity selection . . . . . V. 14, p. 7

79, Actual settlers on restored lands within railroad indemnity limits, who have purchased the land from railroad companies, can secure title from the United States under the settlement laws, if qualified to make entry under these laws . . . . . V. 14, p. 204

80. No forfeiture having been declared in relation to this grant, the power of sale thereunder continues, as though no breach of condition had occurred, and the parties in interest are entitled to patents as evidence of their title as to all lands along the constructed portion of said road, and for indemnity lands for such as have been lost . . . . V. 14, p, 205

81. While no action is advised in the direction of restraining the company from trespass upon lands covered by indemnity selections made in lieu of lands apparently earned by construction, the order of August 15, 1887, revoking the indemnity withdrawal made for the benefit of said company, will stand, pending the early adjustment of the grant.
V. 14, p. 205

82. Circular relative to the restoration of indemnity lands withdrawn for the benefit of certain railroad and wagon-road companies.
V. 14, p. 141

83. Restoration of indemnity lands.
V. 14, p. 260

84. Revocation of the order of withdrawal and restoration of indemnity lands to settlement under the pre-emption and homestead laws . . . . . V. 14, p. 130

85. If the Southern Pacific elect to accept every other alternate, odd-numbered section within the said common limits, the remaining odd-numbered sections may be immediately restored to the public domain. . V. 14, p. 274

86. Application to take materials from adjacent public land to change a narrow gauge railroad to a standard gauge is refused.
V. 14, p. 8

87. When a valid entry is withheld from patent on account of the objectionable character of the warrant located thereon, the parties in interest may procure the issue of a patent by filing in the local office an acceptable substitute for said warrant . V. 14, p. 78

88. The grant to the Atlantic and Southern Pacific was made by the same act, and, under the provisions thereof, the said companies were each entitled to an undivided moiety of every odd section, not reserved from the grant, falling within the common granted limits of the respective roads, without respect to priority of location or construction, the right of each company relating back to the date of the grant . . . . . V. 14, p. 274

89. The grant to aid in the construction of the Willamette and Cascade Mountain Wagon Road Company, was not a grant of lands in place, but a grant of quantity, to be selected from odd numbered sections within certain boundaries determined by the construction of the road; hence without selection, the right of the company does not attach to any specific tract . . . . . V, 14, p. 97

90. By a decision that becomes final, that portion of a claimant's entry which lay within the railroad lines was cancelled. On application for re-instatement, it is held that the matter is not *res judicata*, as the question now is solely between the government and the entryman . . . . . V. 14, p. 156

91. The provisions in the act of 1887, allowing *bona fide* purchasers from railroad companies to purchase from the United States at government price lands within the limits of railroad grants not conveyed to or for the use of the railroad companies, but which were excepted from the operation of the grants, relate exclusively to lands in granted limits.
V. 14, p. 204

92. The Act of March 3, 1887, authorizes the Secretary of the Interior to call upon a railroad company for relinquishment of land erroneously certified, and if not relinquished, suit may be commenced by the Attorney-General . . . . . V. 14, p. 252

93. The right of purchase accorded in the fifth section of said act extends to indemnity lands as well as those within the primary or granted limits . . . . . V. 14, p. 214

94. The only limitations to such right of purchase are, (1) that said purchasers shall be citizens of the United States, or shall have declared their intention to become citizens; (2) that the land shall have been sold to them by a railroad company as a part of its grant; (3) that the land shall not have been conveyed to, or for the use of the company; (4) that the land shall be of the numbered sections prescribed in the grant, and coterminous with constructed parts of the road; and (5) that said purchasers shall have bought in good faith . . . . . V. 14, p. 214

95. An entry, within the limits of a prior railroad indemnity withdrawal, should be approved by patent, on final proof offered and accepted after due notice, without protest or appearance on behalf of the railroad company.
V. 14, p. 56

96. Suit is advised to vacate patents issued to the Union Pacific for lands lying within the limits indicated, in the event that said company does not re-convey said lands on demand made under the act of March 3, 1887.
V. 14, p. 275

97. Suit for the recovery of title is deemed advisable in the matter of certain lands patented to the State of Iowa for the benefit of the Sioux City & St. Paul Railroad Company in excess of those actually earned under the grant . . . . . V. 14, p. 189

98. Following the withdrawal made on the map of general route filed by the Texas Pacific, the even sections therein were raised to double minimum; and such action, although without express statutory authority, is apparently recognized in the act forfeiting said grant, and determines the price of the restored lands . . . . . V. 14, p. 207

99. The *bona fide* purchasers of unclaimed lands, referred to in the third section of the act of March 3, 1887, are those who, without knowledge of wrong or error, have purchased from the railroad company lands previously entered by a pre-emption or homestead settler, whose entry has been erroneously canceled, and which land the settler did not elect to claim after the recovery of title under the proceedings prescribed by the second section of said act . . . . . V. 14, p. 214

100. A selection by a railroad cannot be approved where a settlement right attached prior to said selection, but the company may select other unsettled lands within its indemnity limits, in lieu thereof . . . V. 14, p. 204

101. The construction and operation of a railroad is sufficient to put subsequent settlers within the limits of the grant on inquiry as to the rights of the road and parties claiming adversely thereto . . . . . V. 14, p. 286

102. The settlement right of a pre-emptor existing at date of definite location, defeats the operation of the grant, though the settlement was on offered land and the pre-emptor had, prior to such location, failed to make proof and payment within the statutory period. V. 14, p. 156

103. Land held and occupied under a settlement claim is not subject to indemnity selection . . . . . V. 14, p. 156

104. A settlement alleged subsequent to the grant, and abandoned prior to definite location, leaves the land subject to the operation of the grant, as the condition of land at definite location determines whether it will pass under the grant . . . . . V. 14, p. 271

105. Lands once excepted from a grant by the attachment of a homestead or pre-emption entry, are always excepted, although the entry may have been cancelled prior to the time the grant became effective . V. 14, p. 30

106. The right to purchase under the act of June 15, 1880, existing at definite location, serves to except the tract covered thereby from the operation of the grant . V. 14, p. 156

107. When the map of general route was filed with the Secretary of the Interior, the granting act withdrew from sale or pre-emption the odd sections to the extent of forty miles on each side of the portion of the Northern Pacific railroad involved. As no claim is made to priority of settlement, the claimant's application is rejected. V. 14, p. 102

108. Selection of a tract within the granted limits will not confer title if the land was not granted, but while the selection remains of record, entry of the land should not be allowed . . . . . V. 14, p. 157

109. Until the land shall have been legally determined to belong to the United States, the right to issue patents under the fourth section of said act does not arise. V. 14, p. 214

Double Minimum, 2; Indian Lands, 12, 13; Pre-emption, 8; Relinquishment, 5; Repayment, 3; Res Judicata, 5; Trespass, 1; Widow.

Receipt.

Loss of final receipts . . . . V. 14, p. 159

Registers and Receivers.

1. One local officer can not go beyond his duties by performing the duties of the other in his absence . . . . . V. 14, p. 197

2. Entry not invalid because allowed outside of office hours . . . . . V. 14, p. 157

3. The local officers may arrange the order in which they will take up business, and thus systematize their work . . . . V. 14, p. 126

4. When a decision has been rendered by the local office the record in the case should be, in due course, forwarded to the General Land Office; and the local office should not thereafter take any action looking toward a disposal of the land until further advised. V. 14, p. 233

5. Where the fact upon which a motion for new trial is based are known to the complaining party while the local office has jurisdiction, such motion should be filed in that office . . . . . V. 14, p. 138

6. Commissions of one per cent. V. 14, p. 228

Attorney, 27; Entry, 5; Mines, 21; Notice, 14; Proof, 4, 12, 24; Publication, 4.

Rehearing.

1. Permission accorded to perfect a defective application for rehearing will not impair an intervening adverse right. . V. 14, p. 235

2. On application for rehearing notice thereof should be given the adverse party, and rights against such parties cannot be secured on showing that the failure to serve said notice was the result of erroneous information at the local office as to the requirements of the rules of practice . . . . . V. 14, p. 234

3. In a contested case application for rehearing must be made in accordance with the rules of practice. An informal petition signed by the neighbors and friends of the applicant is not sufficient . . . V. 14, p. 245

4. A rehearing will not be ordered upon an application which sets up no facts that might not have been presented at the former hearing, and gives no reasons for not presenting such facts at that time . . V. 14, p. 259

5. A rehearing will not be granted by the Department where an order for the same, made by the local office, was set aside on the motion of the applicant . . . . V. 14, p. 16

6. That the evidence submitted is conflicting is no ground for new trial . V. 14, p. 236

Affidavit, 4; Appeal, 21; Mortgage, 5.

Relinquishment.

1. A relinquishment is ineffectual, so far as releasing the land is concerned, until filed, and the purchaser of a relinquishment acquires no right thereby to the land . . V. 14, p. 225

2. On the presentation of the entryman's relinquishment, accompanied by his application to enter the land under a different law, the existing entry should be at once canceled and the application allowed subject to any intervening adverse right . . . . V. 14, p. 13

3. In view of the allegations that Payne learned that Turner had purchased a relinquishment, which was deposited in the U. S.

mail with an application to enter, and thereupon hastened to the land office for the purpose of beginning a contest before the relinquishment should arrive, a hearing is ordered to determine the facts and the good faith of both parties . . . . . V. 14, p. 149

4. When the relinquishment of a desert land entry should be at once canceled, and the land thereafter held open to settlement and entry without further action.
V. 14, p. 157

5. The company by accepting the terms fixed by the State Legislature, in extending the time for the construction of the road, relinquished its claim to lands occupied by actual settlers, and authorized the Governor of the State to reconvey such lands to the United States . . . . . V. 14, p. 178

6. A relinquishment filed after the final dismissal of a contest does not inure to the benefit of the contestant . . . V. 14, p. 235

Homestead, 4; Mortgage, 4; Patent, 14; Pre-emption, 33; Repayment, 5, 6; Settlement, 6.

Repayment.

1. The authority of the Department to make repayment is limited by statute, and does not cover a case where the purchase price of land has been twice paid to the government.
V. 14, p. 159

2. Repayment is allowed for double minimum excess paid on land subsequently found not to be within the limits of a railroad grant.
V. 14, p. 21

3. In case of double minimum excess, paid for land subsequently found not to be within the limits of a railroad grant, the excess may be repaid without waiting for the approval of the entry for patent . . . . . V. 14, p. 288

4. Repayment will not be made if the entry was obtained through fraud. V. 14, p. 159

5. The right of repayment should not be denied on the ground that the applicant voluntarily relinquished his claim, where such relinquishment was filed in accordance with a decision of the General Land Office holding that the government could not give title to the land entered, and accepting the relinquishment "without prejudice." V. 14, p. 288

6. Where parties voluntarily relinquish or abandon their entries, repayment will not be allowed . . . . . V. 14, p. 120

7. Application for repayment and restoration of homestead right filed pending the appeal from a judgment cancelling a former homestead entry, is an abandonment of the appeal . . . . . V. 14, p. 160

8. Repayment may be allowed in case of an entry made in good faith where the same cannot be confirmed in its entirety.
V. 14, p. 59

Fees, 3.

Reservation.

1. The President is vested with general authority in the matter of reserving land for public uses, and land so set apart is not subject to disposition under the public land laws during the existence of such reservation.
V. 14, p. 289

Amendment, 4; Indian Lands; Military; Osage, 4.

Residence.

1. Residence under the homestead law dates from entry, and not from commencement of personal residence on the land.
V. 14, p. 4

2. Proof as to residence is sufficient when claimant's family resides on the land, and his improvements show good faith, although claimant may, by business, be compelled to travel most of the time . . . . V. 14, p. 18

3. The effect of a residence confined to a forty-acre tract held under patent can not by occupation and cultivation be extended to include the remainder of the quarter section.
V. 14, p. 271

4. A settler who has a trade may, during the winter, absent himself from his homestead to work at his trade. Residence in this case is held satisfactory . . . V. 14, p. 258

5. When proof is submitted showing unsatisfactory compliance with the law in the matter of residence and bad faith does not exist, additional time will be allowed in which to make new proof, showing the establishment and maintenance of a *bona fide* continuous residence . . . . . V. 14, p. 19

6. A settler who goes upon public land with the intention of remaining just long enough to secure title by colorable compliance with the law, and then returns to his former home, where his family has in the meantime resided and the greater part of his personal property remained, does not establish or maintain the residence required by the homestead law . . . . . V. 14, p. 152

7. Temporary absences on account of sickness, or at a time of the year when no improvements can be made, will not cause the cancellation of an entry where good faith of the entryman is shown . . . . V. 14, p. 175

8. The homesteader's final proof shows that he was absent about five months each year for the purpose of earning money to improve his homestead. This makes a lack of one year and eight months of the five years' residence required by law. Claimant is allowed sixty days within which to show cause why his entry should not be cancelled, and why further time should be allowed him in which to show a *bona fide* residence.
V. 14, p. 127

9. Absence from the land, though covering a considerable time, will not be held to constitute abandonment, or defeat the right of commutation, when followed by a *bona fide* continuous inhabitancy for the period required in case of commutation . V. 14, p. 250

10. Where a homesteader has failed to reside on his homestead for more than two years, he may, on showing residence for fully six months thereafter and prior to contest, commute to cash entry . . . . V. 14, p. 115

11. Producing crops upon land found plowed at date of entry, occasional visits to the land, and mortgaging same to pay for it when not necessary, shows non-compliance with the law in the matter of residence and

improvements, and bad faith of claimants, and the entries of such must be canceled. V. 14, p. 18

12. A claim of residence is not consistent with the substantial maintenance of a home elsewhere . . . . . V. 14, p. 259

13. The vague and indefinite affidavits of claimant explaining his absences are held insufficient . . . . . V. 14, p. 258

14. Absence occasioned by insanity, ill health and poverty held excusable, and the time covered thereby considered as a part of the required term of residence . V. 14, p. 285

15. Poverty accepted as a satisfactory excuse for temporary absences from the land, there being no indications of bad faith on the part of the settler . . . . . V. 14, p. 201

16. Residence in Dakota during the winter will not be insisted on when the entryman's health would be endangered thereby. V. 14, p. 163

17. In view of claimant's valuable improvements, he is allowed further opportunity to present satisfactory proof of residence. V. 14, p. 247

18. In view of the long absences of the claimant, and the fact that his wife did not reside with him on his homestead, he is allowed further opportunity to show satisfactory residence . . . . . V. 14, p. 247

19. The proof of residence and improvements is inadequate as a basis for a patent, but forfeiture will not be decreed without further opportunity for compliance with the law. Sixty days from notice of this decision are allowed in which claimant will be permitted to make new proof . . V. 14, p. 203

20. The maintenance of a residence established in good faith is not inconsistent with absences rendered necessary to secure a support, and improve the land . . V. 14, p. 224

21. While it is true that residence cannot be acquired by occasional visits to a tract, with no intention of making the same a home, yet a residence may be established the instant a settler goes upon the land with the intention in good faith of making his home there to the exclusion of one elsewhere . . V. 14, p. 224

Commutation, 4, 10; Contest, 13; Homestead, 5, 8, 12, 14, 18, 26; Notice, 6, 13, 24; Poverty; Pre-emption, 18, 19, 22, 25, 27, 28; Proof, 17, 18; Timber Culture, 16; Woman, 2.

Res Judicata.

1. The doctrine of *res judicata* is not applicable in the absence of identity of subject matter . . . . . V. 14, p. 215

2. A case cannot be considered *res judicata* when it was sent to the Secretary for general instructions and not on appeal, and the ruling made thereunder to cover all cases of a similar character, especially where it was suspended for the production of proof . . V. 14, p. 253

3. The final rejection by the Department of a claim for land, preferred under a specified statute, does not preclude a subsequent application by the same party under a different law . . . . . V. 14, p. 271

4. The character of the claim being *res judicata*, and not in issue before the General Land Office, its decision thereon is without warrant and of no effect . . . V. 14, p. 150

5. By a decision that became final, that portion of the claimant's entry which lay within the railroad limits was cancelled. On application for reinstatement it is held that the matter is not *res judicata*, as the question now is solely between the government and the entryman . . . . . V. 14, p. 55

Private Lands, 7; Railroads, 90.

Restoration.

(See Railroads).

Review.

Newly discovered evidence material to the issue, which could not have been with reasonable diligence procured at the trial, is proper ground for the review of a departmental decision; but such action is not warranted on evidence merely cumulative in character . . . . . V. 14, p. 236

Appeal, 8, 12, 22, 25, 26; Practice, 9; Transferees, 2.

Revised Statutes.—*Cited and Construed.*

Section 244 . . . . . V. 14, p. 32
Section 453 . . . . . V. 14, pp. 80, 98
Section 460 . . . . . V. 14, p. 32
Section 720 . . . . . V. 14, p. 75
Section 2238 . . V. 14, pp 49, 50, 58, 228
Section 2239 . . . V. 14, pp. 49, 50, 208
Section 2242 . . . . V. 14, pp. 50, 208
Section 2258 . . . . V. 14, pp. 267, 285
Section 2259 . V. 14, pp. 90, 128, 156, 239
Section 2260 . . . . . V. 14, p. 188
Section 2261 . . . V. 14, pp. 89, 128, 156
Section 2262 . . . V. 14, pp. 90, 281, 288
Section 2263 . . . . . V. 14, p. 238
Section 2265 . . . . . V. 14, p. 286
Section 2267 . . . . . V. 14, p. 75
Section 2269 . . . . V. 14, pp. 177, 188
Section 2274 . . . . . V. 14, p. 166
Section 2275 . . . . . V. 14, pp. 10, 119
Section 2276 . . . . V. 14, pp. 10, 119
Section 2281 . . . . . V. 14, p. 6
Section 2287 . . . . . V. 14, p. 151
Section 2288 . . . . . V. 14, p. 164, 199
Section 2289 . . . . V. 14, pp. 176, 238
Section 2290 . . V. 14, pp. 165, 235, 249
Section 2291 . . V. 14, pp. 127, 164, 165 176, 177
Section 2294 . . V. 14, pp. 176, 248, 249
Section 2297 . . . . . V. 14, p. 165
Section 2301 . . V. 14, pp. 187, 202, 238, 239
Section 2306 . . . . V. 14, pp. 160, 246
Section 2319 . . . . . V. 14, p. 151
Section 2320 . . V. 14, pp. 147, 162, 283
Section 2322 . . . . . V. 14, p. 163
Section 2324 . . . . . V. 14, p. 238
Section 2325 . . V. 14, pp. 151, 210, 223
Section 2326 . . . . . V. 14, p. 237
Section 2329 . . . . V. 14, pp. 210, 212
Section 2331 . . . . V. 14, pp. 210, 212
Section 2334 . . . . . V. 14, p. 151
Section 2337 . . . . V. 14, pp. 52, 223
Section 2341 . . . . V. 14, pp. 257, 258
Section 2372 . . . . . V. 14, p. 267
Section 2357 . . . . V. 14, pp. 103, 169
Section 2362 . . . . . V. 14, p. 281
Section 2427 . . . . . V. 14, p. 168

Section 2447 . . . . . V. 14, p. 169
Section 2450 . . . . . V. 14, pp. 27, 28
Section 2451 . . . . . V. 14, p. 28
Section 2456 . . . . . V. 14, p. 279
Section 2457 . . . . . V. 17, pp. 27, 52
Section 2461 . . . . V. 14, pp. 159, 229
Section 2478 . . . . . V. 14, pp. 80, 98
Section 2482 . . . . . V. 14, p. 94
Section 2484 . . . . . V. 14, p. 66
Section 3220 . . . . . V. 14, p. 81
Section 3478 . . . . . V. 14, p. 2
Section 5596 . . . . . V. 14, p. 160
Section 5600 . . . . . V. 14, p. 160

Sac and Fox Indians.

Indian Lands, 14.

San Francisco.

An Act to relinquish the interest of the United States in certain lands to the city and county of San Francisco and their grantees. V. 14, p. 43

Santee Sioux Indians.

Indian Lands, 19.

School Lands.

1. The right to assert a settlement claim for land within a school section is confined to the settler before survey . . . V. 14, p. 159

2. The State cannot select double minimum lands in lieu of lost school sections, minimum in price, not even if one acre of the former is selected for two of the latter. Nor can selections be based upon alleged deficiencies that do not exist . . . . . V. 14, p. 119

3. An Act to enable the State of Colorado to take lands in lieu of the sixteenth and thirty-sixth sections found to be mineral lands . . . . . V. 14, p. 58

4. Regulations for making school indemnity selections in Colorado . . . V. 14, p. 57

5. From the term of the statute it is obvious that Congress intended to grant to Colorado for school purposes two sections, the sixteenth and thirty-sixth, of every township, where such sections at the the time of survey had not been sold or otherwise disposed of, and to provide an equivalent for said sections in the event that they were not subject to the grant at the time of the survey. V. 14, p. 260

6. An Act to provide for the redemption and sale of the school-farm lands now held in Beaufort county, South Carolina, by the United States . . . . . V. 14, p. 69

7. The questions arising as to each school section should be presented through the proper district office in the form of inquiries as to the condition of the sections. V. 14, p. 8

Double Minimum, 2; Indian Lands, 20, 21; Mines, 5.

Scrip.

1. The applicant for scrip must show himself to be the legal representative of the original confirmee . . . . . V. 14, p. 79

2. As the law disposing of coal lands does not allow the segregation of the part of a legal subdivision which contains the coal deposit, the contestant claiming it as coal must prove that the entire subdivision is more valuable for coal than for agricultural purposes. The location in this case with Dodge scrip is sustained . . . . . V. 14, p. 245

3. Indemnity-scrip can issue under said act only on the existence of two conditions: (1) The claim must have been confirmed, and (2) it must, for some reason named in the act, remain unlocated and unsatisfied . V. 14, p. 79

4. The authority of the surveyor-general to issue scrip under the third section of the act of June 2, 1858, is subject to the supervisory jurisdiction of the Commissioner of the General Land Office, acting under the direction of the Secretary of the Interior . . V. 14, p. 79

5. At any time prior to location forty-acres of Sioux Half Breed Scrip may be substituted in place of scrip of a larger denomination. V. 14, p. 108

6. Possession of the Half Breed Scrip having been by former departmental decision accorded one who subsequently assigned the same, the location thereof under such assignment is not dependent upon the right of the locator to act as the agent of the party to whom the scrip was originally issued. V. 14, p. 159

Improvements, 1; Private Lands, 1, 7, 15. 21; Railroads, 87; Warrant.

Secretary of the Interior.

1. It is the duty of the Secretary of the Interior to inquire into the legality of claims presented, regardless of apparent legislative or executive construction, and determine whether they are valid claims in law against the United States . . . . . V. 14, p. 104

2. By virtue of statutory authority, the Secretary of the Interior is invested with power to review, reverse, annul, amend or affirm all the proceedings in the Department instituted to secure the alienation of any portion of the public lands, or the adjustment of private land claims . . . . . V. 14, p. 158

3. The head of a Department has no power or authority to revise or reverse the final decree of his predecessor in a matter properly before him . . . . . V. 14, p. 158

4. A departmental regulation in due conformity with statutory authority has all the force and effect of law . . . . . V. 14, p. 169

5. As the Secretary of the Interior must determine all cases coming before the Department on appeal, it would not be proper for him to express an opinion as to whether the proposed action of the settlers would be in violation of the law . . . . . V. 14, p. 150

Appeal, 17, 19; Improvements, 2; Indian Lands, 9, 11; Notice, 25; Railroads, 21, 33, 50, 59, 92, 107.

Settlement.

1. Bringing material upon the land for building purposes is an act of settlement, and under the circumstances stated, will avail against another party who went upon the same tract prior to the erection of a house by the first party . . . . . V. 14, p. 203

2. His right as a settler must date from the time when he made actual personal settlement . . . . . V. 14, p. 225

3. The right acquired by settlement, in the absence of any claim of record, or otherwise, is confined to the limits of the quarter section within which the settlement is made. A set-

tlement right, existing at the date when the grant became effective, excepts the land covered thereby from the operation of the grant. V. 14, p. 166

4. By this act the only condition pre-requisite to an entry of these lands is that the purchaser shall be an actual settler with the qualifications of a pre-emptor . V. 14, p. 156

5. Conflicting rights acquired in good faith by settlement or filing, are properly determined by the equities of the case, where the legal rights of the parties are equal. V. 14, p. 165

6. On the relinquishment of an entry the right of a settler, then residing on the land, attaches *eo instanti*, and is superior to that of a homesteader who enters the land immediately after the said relinquishment. . V. 14, p. 225

Homestead; Indian Lands, 4; Military, 4; Nebraska; No Man's Land, 2; Notice, 1; Osage, 4; Patent, 14; Pre-emption; Preference Right, 4; Private Lands, 14, 21, 22, 23.

Sioux City & St. Paul R. R.

Railroads, 97.

Sitka.

Homestead, 21.

Soldier.

Homestead, 25, 26, 27, 28, 29, 30; Timber Culture, 5.

Southern Pacific R. R.

Railroads, 52, 58, 85, 88.

Special Agent.

1. The adverse report of a special agent having been filed prior to the offer of final proof, such agent should be present when the same is offered, for the purpose of objecting thereto, if necessary, and cross-examining the witnesses. . . . . V. 14, p. 233

2. An unsworn statement of a special agent should not be considered in evidence. The willful suppression of material facts, taken in connection with the effort to prove up in the shortest possible time, while alleging poverty, nullifies all claims of good faith. In *ex parte* proceedings oral arguments are not encouraged except in special cases, and good reason shown therefor . . . . . V. 14, p. 249

Account, 2; Hearing, 1; Patent, 9.

State Selection.

Adverse Claim, 2; Forfeiture; Patent, 14; Private Lands, 20; School Lands.

Stone.

Publication, 2; Timber Lands, 6.

Sub Judice.

A claim cannot be held as *sub judice* if before a tribunal or officer who has no authority or jurisdiction to adjudge the matter involved. V. 14, p. 157

Railroads, 20.

Suit.

Suits in ejectment against settlers, pending in the courts of a State, may not be enjoined by proceedings in courts of the United States. V. 14, p. 75

Contest, 34; Mines, 20, 21; Patent, 5, 7, 8, 9, 10, 11, 12, 13; Practice, 1; Railroads, 96, 97; Trespass, 3.

Survey.

1. How to sub-divide sections. V. 14. p. 83

2. Payment of augmented rates is not warranted except on conclusive showing of the plat and field notes . . . . . V. 14, p. 122

3. Under the present departmental practice an order will not be made for the survey of the former bed of a meandered lake. V. 14, p. 132

4. The date of a survey is determined by the date of its approval . . . . V. 14, p. 157

5. The publication and approval of a survey under the act of June 14, 1860, in the absence of an application to have it returned into court, has the same effect in law as the issue of patent . . . . . V. 14, p. 157

6. The final determination of such survey is in the nature of a proceeding *in rem*, and therefore conclusive as against claimants who fail to protect their interests . . V. 14, p. 157

7. The price fixed for the original survey of exterior lines should be allowed for retracing and re-establishing such lines, where the contract authorizes such work, but does not fix the price therefor . . . V. 14, p. 122

8. In view of the report of the special examiner, the pretended surveys in question are rejected, and Deputy Surveyor Berdan debarred from employment in the surveying service . . . . . V. 14, p. 121

9. Circular from the Surveyor General as to fraudulent surveys . . . . V. 14, p. 35

10. The authority of the Secretary to order a re-survey, rests in his general and supervisory powers, and may be exercised whether invoked by appeal or otherwise .V. 14, p. 158

Account, 2; Homestead, 4, 16; Mines, 1, 3, 6, 13, 15, 16; Notice, 1, 2; Pre-emption, 5, 29; Private Entry; Private Lands, 4, 5, 9, 13, 14, 15, 17, 19, 20, 23; Proof, 10; Publication, 15; School Lands, 1, 5.

Swamp Lands.

1. Field notes of survey made after the passage of the swamp grants are presumed to designate properly the character of the lands described with reference to said grants. No such presumption attends the field notes of survey made before the passage of said acts. V. 14, p. 65

2. On agreement to make the field notes of survey the basis of an adjustment, the State will only take such lands as are clearly shown by the notes to be of the character granted. V. 14, p. 65

3. Until such time as the Governor of the State has been duly authorized to consent to the adjustment of the grant, in accordance with the principles heretofore adopted and followed by the Department, no further action will be taken on the claim of the State. V. 14, p. 94

4. Where the fee is in the United States at survey, but the land is so encumbered that title cannot fully vest in the State, an equivalent therefor may be taken by the State, or it may elect to await the union of title and possession in the government, and then take the land specifically granted . . . V. 14, p. 260

5. As to lands that were granted to the State by the act of 1849, the purchasers are entitled to protection, and the State to indem-

nity, where such lands were sold by the United States between the 2d of March, 1849, and the 28th of September, 1850; but as to such as were excepted out of the grant of 1849, and were first granted by the act of 1850, the State is only entitled to indemnity after the passage of the latter act. V. 14, p. 34

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Texas.

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Timber Culture.

1. Averments in timber culture, and all other affidavits, relative to the character of land, can be made only upon the *personal knowledge* of the affiant . . . . V. 14, p. 125

2. Notaries public, when attesting timber culture applications, to certify that claimants personally appeared within the limits of the District to subscribe to the necessary affidavits. V. 14, p. 125

3. The preliminary affidavit required of the entryman contains the statutory definition of the character of the land subject to timber culture entry, and, under such definition, the presence of a natural growth of timber on a section precludes entry therein . V. 14, p. 125

4. Citizenship of claimants . V. 14, p. 251

5. Timber culture claimant must personally make non-mineral affidavit. In soldiers' additional entries the party or agent making the entry must make the affidavit . . V. 14, p. 51

6. Where the natural growth of timber is restricted by annual fires, the land containing such growth is not subject to timber culture entry . . . . . V. 14, p. 118

7. Land to be subject to timber culture entry must be "devoid of timber." . V. 14, p. 178

8. A timber culture entry, allowed in accordance with the departmental rulings then existing as to the character of land subject to such appropriation, will not be disturbed where the entryman has subsequently in good faith shown due compliance with law. V. 14, p. 214

9. Two or more timber culture entries may be allowed in one section, provided the area included therein shall not exceed materially one-fourth of the area in the entire section. V. 14, p. 156

10. Though the language of the timber culture law with respect to the amount of land that may be acquired thereunder, differs somewhat from the corresponding limitation in the homestead law, the intent is the same, and amendments under either law should be governed by the same rule . . V. 14, p. 259

11. The question whether claimant can enter another tract of land under the timber culture law will not be considered until he makes application for some particular tract. V. 14, p. 252

12. The right of entry is in the heirs where the land is found subject to such appropriation, and the legal applicant therefor dies before the status of the land is determined. V. 14, p. 20

13. The term "homestead laws" in the third section of the timber culture act is used in a generic sense and will embrace the pre-emption law . . . . . V. 14, p. 90

14. Non-compliance with the law being shown, the burden of proof is thereafter upon the entryman to show his good faith and satisfactory reasons for his failure to meet the requirements of the law . . . . V. 14, p. 57

15. The right of contest against a timber culture entry in default extends to an applicant for the land under the pre-emption law. V. 14, p. 90

16. Residence on land embraced in claimant's timber culture entry cannot be credited on a homestead entry made after the cancellation of the first entry. . . . . V. 14, p. 99

17. Under a charge of failure to comply with the law the third year of the entry, evidence is not admissible as to improper preparation of the soil during the preceding years. V. 14, p, 156

Fees, 3; Wife, 6.

Timber Lands.

1. The right of purchase under the act of June 3, 1878, will not be allowed to defeat or impair a prior valid pre-emption .V. 14, p. 11

2. Settlers may remove timber from vacant public lands for their family and settlement uses, but not for the purpose of sale and speculation . . . . . V. 14, p. 84

3. Such use and disposition of timber growing on land covered by a homestead entry cannot be regarded as the "cultivation" required by the homestead law. . V. 14, p. 159

4. But if the timber applicant shows such claim to be invalid it will thereafter constitute no bar to his purchase . . V. 14, p. 159

5. But if the timber applicant show such a claim to be invalid, it will thereafter constitute no bar to his purchase . . . V. 14, p. 11

6. Instructions for making and perfecting entries of lands chiefly valuable for timber and stone . . . . . V. 14, p. 134

7. Petition to modify regulations of August 6, 1886, denied . . . . . V. 14, p. 228

8. Milling parties cannot sell timber cut from mineral lands to lumber dealers. Such timber must be sold to individuals for personal use. . . . . V. 14, p. 252

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1. The location of a townsite, under State laws, on land temporarily segregated from the public domain, is a valid appropriation as against a subsequent homestead entry. V, 14, p. 159

2. The preferred right to purchase a town lot is accorded to the actual settler thereon, and such settter may buy an additional lot upon which he has substantial improvements. V. 14, p. 159

Transferees.

1. Parties who purchase from claimants, must give proper notice of their interests in

order to be entitled to notice of action taken thereon . . . . . V. 14, p. 113

2. If the showing made by the transferee would not entitle the entryman to be heard on review, the application must be denied. V. 14, p. 88

3. Purchase under the second section of the act of June 15, 1880, cannot be made by a transferee of the original entryman, if such transferee is in fact not the real party in interest . . . . . V. 14, p. 166

4. Prior to patent, transferees have no better title than the entryman has to confer, which right is subject to the subsequent action of the Land Department . . . . V. 14, p. 4

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1. The unlawful occupancy of public land by a willful trespasser, existing when the grant becomes effective, does not serve to except the land covered thereby from the operation of the grant . . . . . V. 14, p. 286

2. On the cancellation of an entry the tract covered thereby becomes vacant public land, and the Department has full authority to protect the same from trespass . . V. 14, p. 245

3. It appearing that the title to the lands in question will pass under the selection made thereof, action against the company for trespass thereon is not advised . . . V. 14, p. 56

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2. A married woman, who by the laws of the State is authorized to purchase and hold realty as a *feme sole*, and independently control her separate property, is entitled to make timber land purchase under the act of June 3, 1878. . . . . V. 14, p. 145

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4. On the submission of final proof by the deserted wife of a homesteader, the entry may be sent to the Board of Equitable Adjudication . . . . . V. 14, p. 285

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Abstract of Title.
Mines.

Account.
The discretion of the Commissioner to adopt such means, in the examination of accounts, as may seem to him best calculated to ascertain the justness and accuracy of the same, will not be controlled by the Department unless there is a clear showing that such power has been improperly exercised.
V. 13, p. 84

Acts of Congress.
As between conflicting statutes, the latest in date will prevail, and as between conflicting sections in the same statute, the last in order of arrangement will control. . . V. 13, p. 190

Additional Entry.
Homestead, 69–78.

Adjoining Farm Entry.
Homestead, 7, 9.

Adverse Claim.
Application for reinstatement; Final proof, 6; Pre-emption, 1; Private land claims, 10; Register, 3; Relinquishment, 8.

Affidavit.
1. The filing of a certain affidavit is an improper attempt to interject into the case, without the knowledge of the contestant, that which constitutes no part of it . V. 13, p. 51

2. Pending attack upon an entry for illegality, but prior to service of notice therein, the petition of the entryman for permission to make a new entry for the land was received; *Held*, That as mistake of law was apparent, and good faith manifest in complying with the law, such petition should be allowed, especially as no diligence to secure service of notice was shown by the contestant.
V. 13, p. 86

Agent.—*See Attorney.*
Timber Culture, 11, 12.

Alabama.
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Alien.
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Amendment.
How applications to enter should be amended . . . . . V. 13, p. 205

American Investment Company.
When interested, may be noted on records of local office . . . . . V. 13, p. 266
Contest, Homestead.

Appeal.
1. The rules of practice relative to appeals will be strictly enforced. . . V. 13, p. 148

2. An appeal will lie from a decision of the General Land Office holding that the evidence does not justify forfeiture of the entry, and ordering a further hearing . V. 13, p. 133

3. An appeal will properly lie from a decision of the Commissioner, which passed upon the merits of the case. . . V. 13, p. 23

4. A mortgagee, after final entry, is entitled to be heard on appeal, in case the entry is subsequently held for cancellation.
V. 13, p. 63

5. An interlocutory motion is not appealable. An appeal lies only from the final decision of the Register and Receiver in a contest . . . . . V. 13, p. 268

6. A decision of the General Land Office, dismissing proceedings wherein a hearing had been ordered and evidence taken, is not interlocutory, and is, therefore, subject to appeal . . . . . V. 13, p. 81

7. The local officers have no authority to dismiss an appeal because they deem it defective . . . . . V. 13, p. 281

8. An assignee is not a party to the case, and therefore has no right of appeal. He should seek his relief from his vendor in event of failure of title, and not from the United States . . . . . V. 13, p. 26

9. The notice of appeal and specification of errors may be filed at different dates, if each is filed within the time prescribed therefor.
V. 13, p. 229

10. The sufficiency of an appeal from the General Land Office is left for the final determination of the Department . V. 13, p 229

11. An appeal will not be considered where no specification of errors is filed.
V. 13, p. 170

12. Notice of appeal and specification of errors must be served upon the opposite party, and in the absence of such service the appeal will be dismissed . . . V. 13, p. 170

13. A failure to appeal in time (in this case two days after limitation), from the decision of the Commissioner of the General Land Office, is fatal . . . . . V. 13, p. 101

14. A review of the Commissioner's action cannot be secured by *certiorari* when the right of appeal is lost through failure to file in time.
V. 13, p. 207

15. Rule 82 of Practice is designed to prevent the transmittal of an appeal which the Commissioner may consider defective, but the Department is not concluded if the Commissioner does not act thereunder . V. 13, p. 185

16. Under Rule 48 of Practice, failure to appeal may be conclusive as to the rights of the parties, but will not preclude the Commissioner of the General Land Office from re-

viewing the decision of the local office.
V. 13, p. 230

17. Failure to file specification of errors within the time required by the Rules of Practice is held a waiver of the right of appeal.
V. 13, p. 78

18. An appeal being filed by an attorney who has not complied with the circular requirement of July 31, 1885, with respect to his authority to appear in said case, notice of such defect should be given under Rule 82 of Practice . . . . . V. 13, p. 101

19. Where the contestant's attorney, in fraud of his client, waived the right of appeal and filed a new contest on behalf of another against the same entry, the right of appeal was not cut off by the said waiver or a new contest . . . . . V. 13, p. 4

20. Supplemental proof having been filed during the pendency on appeal before the Department of an *ex parte* case, it is returned for the further consideration of the General Land Office . . . . . V. 13, d. 33

21. Rules 48 and 49 of Practice contemplate the reversal or modification of a decision of the local office, if it is contrary to existing laws and regulations, though the appeal therefrom is not filed in time . . . . . V. 13, p. 194

22. Pending appeal to the Department, all proceedings should be stayed until final action thereon . . . . . V. 13, p. 206

23. The only parties authorized to appeal in land cases are parties to the record. They may appear by attorney, but the attorney must show for whom he appears. An appearance for "claimants under A. B." or "on behalf of various parties interested," is not recognizable. Assignees under surveying contracts, or order of survey, or of any claim or unsettled account, are not recognized . . . . . V. 13, p. 45

Contest, 22, 23, 24, 30; Hearing, 4; Homestead, 2, 23, 54: Private land claims, 12; Relinquishment, 8.

Application for Reinstatement.

An application for the reinstatement of a canceled entry constitutes an appropriation of the land involved, subject, however, to intervening adverse rights . . . . . V. 13, p. 27

Application to Enter.

1. Local officers have authority to retain rejected applications. Must notify claimants of rejections and reasons. The papers belong by right to files of office. . . . V. 13, p. 243

2. Papers pertaining to entries and forming the basis thereof, belong to the permanent files of the General Land Office, and may not be returned to the parties filing the same.
V. 13. p. 255

3. A subsisting void entry is no bar to the subsequent legal application of the person who made such entry . . . . . V. 13, p. 39

4. An application to enter land covered by a *prima facie* void entry, accompanied with information charging the invalidity of said entry, is held only for the ascertainment of the status of the entry thus attacked. If said entry is adjudged void from inception, the pending application should be received as of the date made . . . . . V. 13, p. 26

5. An application to enter patented land confers no right upon the applicant, either in the courts or before the Department, to question the validity of the patent by which title passed from the government . . . V. 13, p. 8

6. A legal application to enter is, while pending, equivalent to actual entry, so far as the applicant's rights are concerned, and withdraws the land embraced therein from any other disposition, until final action thereon.
V. 13, p. 38

Affidavit, 2; Amendment; Indians, 5.

Assignee.

Appeal, 8, 23; Desert Lands, 5, 8, 10; Homestead, 37, 38, 75; Special Agent, 7.

Attorneys.

1. Recognition of agents and attorneys.
V. 13, p. 268

2. Information to attorneys . V. 13, p. 170

3. Regulations governing attorneys and agents practicing before the Treasury Department. . . . . V. 13, p. 195

4. Attorney employed by the Register.
V. 13, p. 242

5. The requirement of written authority on the part of attorneys appearing for alleged fraudulent entrymen as provided in said circular, is within the authority of the department . . . . . V. 13, p. 75

6. The rule in circular of July 31, 1885, is not retroactive, and where an appearance in the usual form was noted prior to the promulgation of said rule, the attorney was duly entitled to recognition . . . . . V. 13, p. 75

7. Except in suspected cases, the attorney in good standing practicing before the General Land Office or the Interior Department need not file the written authority of his client . . . . . V. 13, p. 241

8. An attorney in good standing before the Land Department, prior to filing his appearance in a case, but preliminary thereto, is entitled to inspect the record and all papers upon which action has been taken affecting the rights of the parties . . . V. 13, p. 277

9. Collection of fees by attorneys.
V. 13, p. 242

10. Attorneys and fees . . . V. 13, p. 145

Appeal, 18, 19, 23; Contest, 21, 28; Desert Lands, 10; Homestead, 73, 76; Mines, 15.

Attorney General.

Cases will not be referred to the Attorney General for his opinion, except where the Secretary is in doubt as to the correct conclusion . . . . . V. 13, p. 243

Bastard.

The mother of an illegitimate child is the head of a family . . . . . V. 13, p. 102

Breaking.

Timber Culture, 13, 14.

Burden of Proof.

In case of special defense, the burden of proof shifts to the defendant . . V. 13, p. 80

Special Agent, 2.

California.

Removal of land office from Bodie to Independence . . . . . V. 13, p. 47

Cancellation.

Appeal, 4.

Certiorari.
A petition for certiorari should be under oath, setting forth specifically the decision complained of, and wherein the same is irregular, or in what manner the applicant is injured thereby . . . . . V. 13, p. 231
Appeal 14.

Children.—*See Minors.*

Circular Instructions.

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RAILROADS.

April 30, 1886. Instructions under the law of January 13, 1881 . . . . . V. 13, p. 68

October 22, 1886. Railroad Right of Way through the Indian Territory. . V. 13, p. 211

Citizenship.

1. Explanations of Rule 5 of Circular of February 19, 1887 . . . . . V. 13, p. 280

2. The rule requiring homestead applicants to furnish record evidence that they have complied with the law relating to citizenship, has not been rescinded . . . . . V. 13, p. 33

Clerk.

1. The clerks in the offices of the U. S. Surveyor-Generals are prohibited from purchasing public lands while in such employ. V. 13, p. 157

2. Clerk hire and office rent . V. 13, p. 157

3. Clerk hire in contest cases. V. 13, p. 157

Homestead, 40.

Coal.

Mines, 14.

Colorado.

Establishment of Bent land district in. V. 13, p. 204

Commutation.

Homestead, 25, 26, 27, 29, 61.

Contest.

1. An affidavit of contest may be received, but no action should be taken thereon, pending final disposition of a prior suit involving the same land . . . . . V. 13, p. 63

2. The fee of one dollar need not accompany an affidavit of contest filed subject to a prior contest . . . . . V. 13, p. 268

3. The entryman cannot plead the disqualification or challenge the motives of a contestant. It is immaterial whether a contestant enters or is qualified to enter the land in dispute . . . . . V. 13, p. 30

4. In case of variance between the information and notice, and failure to amend on objection raised thereto, the evidence must be confined to the charge as laid in the notice . . . . . V. 13, p. 26

5. Until final decision in a contest, the entryman whose claim is attacked should continue to comply with the law, and if he fails so to do his entry will be liable to attack should he successfully defend in the pending suit . . . . . V. 13, p. 149

6. A claimant merely having knowledge of a pending contest against him is not sufficient to bring him into court, and does not render it necessary for him to defend his claim . . . . . V. 13, p. 194

7. Actual notice or knowledge of a pending contest does not render it incumbent upon the defendant to appear and defend in the absence of due legal service or notice. V. 13, p. 1

8. Publication by advertisement, the sending of a copy by registered letter, and posting of copy on the land, are essential parts of notice by publication, and the absence of any one of these essentials makes inoperative the efficacy of the others, if the defect be not waived . . . . . V. 13, p. 194

9. Where a pending contest is attacked on the ground of fraud by one who also makes due application to contest the entry in question, notice will not issue on such application, but the case will be held for the final disposition of the prior contest . . . . V. 13, p. 52

10. No action should be taken under a contest relating to land already involved in a suit, pending an appeal, until the final disposition of the first case . . . . . V. 13, p. 30

11. The charge of abandonment will not lie where it appears that residence was established and the subsequent absence was the result of judicial compulsion . V. 13, p. 121

12. Evidence showing that the claimant has persistently asserted his rights in the local courts, is admissible as against the charge of abandonment . . . . . V. 13, p. 55

13. A continuance to ascertain the whereabouts of the entryman and procure his attendance properly refused where he was represented by counsel at the hearing, and the motion therefor was not filed until after the contestant had submitted his testimony. Good faith not consistent with evident evasion of the law . . . . . V. 13, p. 254

14. Under the instructions of December 27, 1882, an affidavit for continuance is sufficient, though executed before the day set for hearing, and before some officer other than the Register or Receiver . . . . . V. 13, p. 181

15. Through continuances granted on the application of both parties, the hearing did not occur until sixty days after service of notice had been perfected, and such notice was accordingly held sufficient . V. 13, p. 147

16. Trial on day fixed by continuance. V. 13, p. 99

17. Continuance on defendant's application . . . . . V. 13, p. 243

18. A defect in an affidavit for continuance will not be considered where it was admitted that if present, the witness would testify as alleged . . . . . V. 13, p. 15

19. An order for continuance should not be made without giving the opposite party opportunity to admit that the absent witnesses would, if present, testify as alleged. V. 13, p. 16

20. Though an affidavit for continuance may not be strictly in accordance with Rule 20 of Practice, yet if held sufficient by the local office, it is not error to consider said affidavit as evidence on the admission that the witness if present would testify as alleged. V. 13, p. 3

21. In contests, continuances should not be allowed on the mere request of attorney, nor should notice by publication be allowed on the affidavit of contestant's attorney, in the absence of any showing by the contestant himself. Contest is dismissed for want of notice and apparent collusion . . V. 13, p. 77

22. Though the contestant may withdraw from a case pending on appeal before the Department, such withdrawal will not prevent action on the evidence submitted. V. 13, p. 148

23. An application to contest rejected for illegality, but pending on appeal, will not bar the initiation of a second contest, though no proceedings should be had thereunder until the final disposition of the appeal. V. 13, p. 101

24. An application to contest filed pending appeal by another from the rejection of his contest for illegality, should be received and held subject to the result of such appeal. V. 13, p. 100

25. An entryman who has failed to comply with the law has forfeited all rights to the land, and cannot set up his possession to defeat the application of a contestant. V. 13, p. 51

26. There is no authority to require an indemnifying bond in land contests. If a conspiracy to injure exists, the remedy is in the courts . . . . . V. 13, p. 205

27. Testimony when taken before a commissioner should be sealed and transmitted to the local office by mail or express. V. 13, p. 281

28. Testimony thus taken, but delivered to the local office through an attorney for one of the parties, who had the same in his possession for some time, will not be considered. V. 13, p. 281

29. In the event of the failure or refusal of appointee, the parties to the suit may, by agreement, designate any other qualified officer to act . . . . . V. 13, p. 281

30. In view of the dilatoriness and apparent bad faith of the contestant, his contest is dismissed, subject to appeal . . V. 13, p. 77

31. Objection to jurisdiction is not waived by proceeding to trial after motion to set aside the service of notice is overruled, and exception duly taken thereto . . V. 13, p. 1

32. When testimony in a contest is taken before an officer other than the Register and Receiver, the order therefor should be made of record in the local office. After the dismissal of contest it should not be re-opened, and proceedings had thereunder, without due notice to the defendant . . . . V. 13, p. 194

33. Under Rule 41 of Practice, frivolous and obviously irrelevant matter should be excluded from the record . . . . V. 13, p. 16

34. Acts done toward curing default, after the initiation of contest, will not be considered as affecting the case made out by contestant . . . . . V. 13, p. 80

35. The right of cross-examination, in taking evidence by deposition, is exercised by filing cross-interrogatories as provided in Rule 25 of Practice . . . . . V. 13, p. 3

36. An entry should not be canceled upon evidence taken in a case between other parties and dismissed prior to the allowance of the said entry. . . . . V. 13, p. 52

37. As a contest regularly initiated should not be dismissed, except after due notice to the parties of record, a rehearing is ordered herein . . . . . V. 13, p. 37

38. Where a contestant withdraws his contest, he simply loses his preference right. A decision will be rendered on the evidence submitted at the hearing . . . V. 13, p. 218

39. On the cancellation of an entry after contest, the land is open to settlement or entry subject only to the preference right of the successful contestant . . . . . V. 13, p. 62

40. A preference right of entry cannot be secured through a contest initiated for the purpose of selling the right of contest, rather than securing the cancellation of the entry. V. 13, p. 278

41. In a contested case the Department will not indicate to the Commissioner of the General Land Office what his decision should be prior to his final action thereon. V. 13, p. 2

Affidavit, 1, 2; Appeal; Clerk, 3; Final Proof, 11; Homestead, 31, 33, 36, 41, 47–54; Indians, 1; Pre emption, 13, 14; Preference Right, Relinquishment, 1, 3, 4, 6, 7, 9; Timber Culture 5, 10, 15, 16, 17, 18, 19.

Continuance.

Contest, 13–21.

Copies.

1. Copies of court records . . V. 13, p. 170

2. Hereafter no drafts or checks, except those on Washington City banks, will be received in payment for certified copies furnished by the General Land Office. V. 13, p. 266

Hearings, 1.

Courts.

1. Courts of the Cherokee nation are recognized as courts of record, under the same rule as applied to courts in the States and Territories . . . . . V. 13, p. 61

2. A case will not be sent to the Court of Claims for its action or opinion on questions of administrative nature that are clearly within the jurisdiction of the General Land Office where the matter is pending. V. 13, p. 13

Contest, 26; Copies, 1; Private Land Claims, 1, 2, 3.

Court Decisions.

Reported in full.

UNITED STATES SUPREME COURT.

Chas. W. Buttz *vs.* Northern Pacific Railroad Company, Indian Occupancy of Lands in Dakota . . . . . V. 13, p. 223

UNITED STATES CIRCUIT COURT.

District of California.

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United States *vs.* Kate D. McLaughlin *et al.*, Railroad Grant . . . . V. 13, p. 258

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STATE SUPREME COURTS.

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Cultivation.

Final Proof, Homestead, 11–64, 70; Improvements; Residence, 1; Timber Culture, 21.

Declaratory Statement.
Homestead, 58–62; Pre-emption.

Desert Lands.
1. An entry for three hundred and sixty acres extending along a stream for a distance of two miles, is not compact. . . V. 13, p. 45
2. In determining whether an entry is within the regulations as to compactness, its relation to adjacent lands may be properly considered . . . . . V. 13, p. 137
3. An application to enter land under the desert land act, will be refused where the applicant is unable to swear to the desert character of the land from personal knowledge. V. 13, p. 108
4. Desert land entries are not provided for in the first section of the act of May 14, 1880, and relinquishment of such entries must be acted upon by the General Land Office before the entries are canceled at the local office. V. 13, p. 137
5. Assignments of desert land entries made while the rule allowing the same was in force will be recognized, but no more than six hundred and forty acres may be thus acquired, and on final proof patent will issue in the name of the original entryman. V. 13, p. 166
6. Proof of crops raised may be regarded as supplementing proof of irrigation, but should not be held as an essential requirement in final proof . . . . . V. 13, p. 175
7. The source and volume of the water supply, the carrying capacity of the ditches, and the number and length of all ditches on each legal sub-division, should be specifically shown, the witnesses, stating their means of knowledge, and whether they at any time saw the land effectually irrigated. V. 13, p. 175
8. After a party has entered desert land in good faith, he may make an agreement to convey the land after title shall vest in him. Such agreement is not an assignment of the entry . . . . . V. 13, p. 220
9. The desert land law is satisfied if satisfactory evidence is presented that the land invaded has been fully irrigated. It must be shown that every legal sub-division of the entered tract has been actually irrigated in a manner indicative of the good faith of the claimant. The right to the water used, the quantity of it, the manner of its distribution, and the permanency of the supply, are to be taken into consideration . . . V. 13, p. 154
10. The acquisition of land under the Desert Land Act by any one person is limited to six hundred and forty acres, whether taken by original entry or assignment. Final proof purporting to be made by the original entryman, but submitted and sworn to by one acting as attorney in fact, is illegal and invalid . . . . . V. 13, p. 138
11. In making final proof in desert land cases, ownership, not lease, of the water used must be shown . . . . . V. 13, p. 114
Fees, 2.

Dwelling House.
Homestead, 15, 20; Residence, 5.

Excess.
To whom the return should be paid. V. 13, p. 72

Expenditure.
Mines, 3, 4, 5.

Fees.
1. Instructions under act of August 4, 1886 . . . . . V. 13, pp. 144, 218
2. Registers are entitled to charge for giving notice of the cancellation of a desert land entry. . . . . V. 13, p. 37
3. Fees for testimony and maps. V. 13, p. 243
Attorney, 9, 10; Contest, 2; Hearing, 1; Homestead, 6; Register and Receiver.

Filing. *See Declaratory Statement.*

Final Proof.
1. Ready-made final proofs will not be accepted. The questions must be asked by the officer, and the answers then and there written down by him as they are given. V. 13, p. 266
2. Cross-examinations final proofs. V. 13, p. 14
3. New final proof forms . . V. 13, p. 194
4. Corrections in new final proof. V. 13, p. 217
5. A protestant, who sets up his filing and settlement claim thereunder to defeat the final proof of another, must submit to a judgment of cancellation, if his protest fails, though he has not yet offered his own final proof. . . . . V. 12, p. 232
6. On the day fixed for submission of final proof, adverse claimants who have received due notice thereof must appear and show cause why such proof should not be accepted, or lose the right to be subsequently heard therein. . . . . V. 13, p. 195
7. Rules to be observed in making final proof in pre-emption and commuted homestead cases . . . . . V. 12, p. 25
8. Examination of proofs . . V. 13, p. 243
9. Rules to be observed in passing on final proof papers in pre-emption and commuted homestead cases . . . . . V. 13, p. 280
10. Special certificate on final proof. V. 13, p. 169
11. Final proof cannot be made while an entry is under contest . . . . . V. 13, p. 194
12. Final proof must be taken on the day named in the notice, and the testimony of the claimant and his witnesses taken before the same officer . . . . . V. 13, p. 270
13. Local officers must examine witnesses as to their means of information and the extent of their knowledge, and test the reliability of all proof presented to them. Mere answers to interrogatories in the printed forms is not satisfactory without cross-examination. V. 12, p. 14
14. Error appearing in the published description of the land, the final proof is suspended for further publication of notice. V. 13, p. 25
15. As the land proved up was different from that described in the notice, new proof is required, with evidence of compliance with the law up to date of proof . . V. 12, p. 217

16. Posting notice in the office of the Register, of intention to make final proof, is an essential, without which such proof cannot ne accepted . . . . . V. 12, p. 280

Appeal, 20; Desert Lands, 5 to 11; Homestead, 17, 24, 55, 56, 64; Pre-emption, 13, 14, 17, 19; Register, 5; Res judicata. Review, 4; Timber Culture, 20, 23.

Forts. *See Military.*

Fraud.

Purchasers take at their own risk. Fraudulent entries will not be confirmed under any circumstances . . . . . V. 13, p. 13

Appeal, 19; Attorney, 5; Contest, 9; Hearing, 2; Homestead, 34, 35, 78; Pre emption, 23; Private Land Claims, 16; Relinquishment, 4, 5; Timber Culture, 4; Timber Lands, 3.

Hearing.

1. Instructions relative to hearings, fees, and copies. . . . . V. 13, p. 51

2. Hearings in alleged fraudulent entries. V. 13, pp. 253, 267

3. While it is proper for the local officers to appoint a particular hour of the day for hearing in a given case, in order to regulate and systematize business, yet such rule should not be so applied as to work a forfeiture of the rights of an honest claimant, who happens to be prevented from arriving at the office exactly at the appointed time, owing to some misfortune . . . . . V. 13, p. 3

4. The local officers have no authority to cancel an entry except on the filing of a relinquishment under the act of May 14, 1880. The finding of the local office on a hearing, that an entry should be canceled, will not effect such cancellation, without the order of the Commissioner, although no appeal is taken from the decision of the local office. V. 13, p. 14

5. An order having been granted, the entry thereof on the record should not be obliterated upon the vacation of the order. V. 13, p. 16

6. If it appear that the evidence submitted is not sufficient to warrant cancellation, the government may institute an independent inquiry, under Rule 72, if deemed advisable. V. 13, p. 133

7. The jurisdiction of the local office over a case is not abridged by the fact that it comes before such office on an order for a hearing issued by the Department or the General Land Office . . . . . V. 13, p. 146

Appeal, 2, 6; Contest—Homestead, 34; Mines, 22, 23, 24; Notice, 3; Private land claims, 9, 10; Scrip, 1; Special agent, 4, 5, 7.

Homestead.

1. An alien having made homestead entry and subsequently filed his intention to become a citizen, it is held that said entry was not void; and that in the absence of an adverse claim, the alienage at time of entry will not defeat the right of purchase under the act of June 15, 1880 . . . . . V. 13, p. 88

2. Information as to the right of appeal not having been given under Rule 66 of Practice, the right of the rejected applicant to be subsequently heard is recognized. An entry made for the purpose of wrongfully acquiring the improvement of another, and under which settlement could only be consummated by forcible intrusion, confers no right under the homestead law . . . . . V. 13, p. 266

3. Where land has already been entered as a homestead, it is improper to allow a second entry thereof by another party who claims by virtue of a prior settlement. Regular hearings should be had to determine the respective rights involved . . . V. 13, p. 65

4. The alleged decision of Judge Blair, touching second homestead entries, will not be recognized by the Land Department. V. 13, p. 219

5. Settlers cannot be authorized to transfer or to agree to transfer any part of their claims for business purposes . . . . . V. 13, p. 148

6. The right of entry is complete, and in comtemplation of law the land is entered, from the moment when the application, affidavit, and legal fees are placed in the hands of the local officers, if the land is properly subject to such appropriation . . V. 13, p. 30

7. The right to make an adjoining farm entry is not enlarged or modified by Section 3 of the Act of May 14, 1880 . V. 13, p. 162

8. The general requirements, of the homestead law, as to residence, are not waived by the provisions of said section, though credit is given therein for residence prior to entry. V. 13, p. 162

9. Where a party died leaving to his widow and several children, some of them minors, two hundred acres of land, the widow, on the strength of her dower right of one-third therein during her life, cannot be allowed to make an adjoining farm entry. . V. 13, p. 78

10. The mother of an illegitimate child is regarded as the head of a family. V. 13, p. 102

11. The widow of a deceased homestead entryman who had complied with the law up to the date of his death, is not required to reside on the land, but may, by continued cultivation thereof for the remainder of the period, complete the claim and receive patent therefor . . . . . V. 14, p. 16

12. A woman who makes a homestead entry and subsequently marries prior to completing title loses her right thereby to complete the title either by continued residence and cultivation for the prescribed period, or by commutation under Sec. 2301 Rev. Stats. V. 13, p. 102

13. After an unmarried woman has made a homestead entry, she may marry without annulling such entry, provided she fully complies with the homestead law in the matter of residence and cultivation . . . V. 13, p. 170

14. The homestead entryman, a single woman, having married subsequent to the date of her homestead entry, and prior to completing title, forfeited her homestead rights, and her final proof is therefore rejected. V. 13, p. 102

15. Husband and wife cannot hold two different tracts and comply with the law as to residence and cultivation at the same time,

although the house is built across the line and occupied by both parties . . . V. 13, p. 282

16. Under the facts stated, a widow cannot perfect her late husband's homestead entry unless she actually resides upon and cultivates the land during the period of time required by law . . . . . V. 13, p. 78

17. A widow may make in her own right a homestead entry, though at such time holding land covered by the homestead entry of her deceased husband upon which final proof has not been made . . . . . V. 13, p. 182

18. A widow who makes a homestead entry is required to maintain residence the same as any other person. If she is the widow of a soldier she has the benefit of his military service, but she can not make an entry after his death without living on the land just as the soldier would have been required to do if the entry had been made by himself. V. 13, p. 40

19. There is no provision of law which authorizes a person to make a second homestead entry where his first entry was made upon lands legally subject thereto, and that no discretion is vested in this office or department to allow entries not authorized by law. V. 13, p. 54

20. The house of a settler should be entirely upon the tract he claims. Where it extends upon another tract, that fact will excite suspicion of bad faith, and an attempt to evade the provisions of the law. V. 13, p. 172

21. Instructions as to residence, and post-office address . . . . . V. 13. p. 195

22. Claimants, residing upon and cultivating land for a certain period, which in connection with military service extend beyond the requirements of residence and cultivation, must receive credit as having complied with the legal requirements of the homestead law. V. 13, p. 219

23. On the last day of the six months following, affidavit of contest was filed, and the hearing set for a day two months later. No objection thereto being made, or appeal taken, the entry is canceled, the evidence showing a change of residence for more than six months . . . . . V. 13, p. 87

24. Final proof must be submitted on the day fixed in the notice. The testimony of a witness not named in the notice would not of itself invalidate the final proof . V. 13, p. 283

25. In making commutation proof it is not absolutely essential that the residence shown should cover a period of six months after entry . . . . . V. 13, p. 18

26. The proof submitted does not show satisfactory compliance with the law in the matter of residence, but as bad faith does not appear further time is accorded, within the lifetime of the entry, in which to perfect residence . . . . . V. 13, p. 89

27. Commutation proof approved for patent where the entryman died after the submission of final proof, which, if not altogether satisfactory with respect to residence, failed to show any want of good faith . V. 13, p. 199

28. To acquire residence under the homestead law the former residence must be abandoned, and such change can be effected only by the concurrent act and intention of the settler . . . . . V. 23, p. 182

29. By the third section of the Act of May 14, 1880, the right of the homesteader to initiate a claim by settlement is recognized; hence in commutation of entry, made under said act, the period of residence may be computed from settlement . . . . V. 13, p. 134

30 A pre-emptor and homesteader with conflicting claims having agreed to certain mutual concessions for the purpose of terminating the controversy, it was competent for the pre-emptor to abandon his claim as such and take the land as a homestead, and he would in such case be entitled to the benefit of his settlement, as provided in the act of May 14, 1880, to the exclusion of intervening claims . . . . . V. 13, p. 160

31. Entryman's application to purchase under the second section of act of June 15, 1880, cannot be allowed after contest has been initiated. The inception of a right of entry under a contest, which is a statutory right, cuts off any right of purchase under this act . . . . . V. 13, p. 30

32. No entry will be allowed under second section of this act when original homestead entry was not valid, nor where adverse legal rights of any character exist at the date of the application to purchase . . . . V. 13, p. 30

33. A purchase under this act cannot be allowed during the pendency of a contest involving the right to make the entry in question . . . . . V. 13, p. 30

34. A cash entry under the second section of this act being attacked, on the ground of fraud in the original entry, a hearing is ordered . . . . . V. 13, p. 88

35. Claimant's homestead entry was fraudulently made, but even if it had been initiated according to law, there was no entry upon which the party could base his claim to any rights under act of June 15, 1880, when he made application to purchase the land, nearly four years after cancellation of his entry. V. 14, p. 79

36. An application to purchase under the second section of this act made after the initiation of a contest against the original, should be suspended until the final disposition of said contest . . . . . V. 13, p. 99

37. Instructions relative to purchases under act of June 15, 1880, for the benefit of assignees . . . . . V. 13, p. 103

38. The second section of this act secures the right of purchase only to transferees who became such prior to the passage of said act. V. 13, p. 122

39. The act of June 15, 1880, was intended to afford relief and not to sanction robbery. Where a homestead entry was made through clerical error covering a tract on which the entryman never settled, and which he never claimed, the patent erroneously issued for such tract should be cancelled and another patent issued for the tract, which, as in this

case, the claimant had resided on and improved for several years . . . . . V. 13, p. 135

40. The right of purchase under act of June 15, 1880, is not affected by reason of the original homestead affidavit having been illegally made before a clerk of court. V. 13, p. 160

41. The local office may properly entertain a contest wherein the legality of a homestead entry is called in question . . . V. 13, p. 32

42. The failure to file a motion in time is not cured by notice thereof served within the proper period . . . . . V. 13, p. 230

43. Poverty and sickness will be accepted as an excuse for absences only where the good faith of the entryman is shown. V. 12, p. 270

44. Abandonment is not established by evidence showing frequent and protracted absences following entry, where the entryman had prior to entry resided upon and improved the land for a term of six years under contract with a railroad company for whose benefit the land was then withdrawn. V. 13, p. 208

45. A contest resting on the charge of abandonment, sale, and relinquishment, is not premature though brought within less than six months after entry . . . . . V. 13, p. 230

46. In view of the acts of the entryman after his return from an absence of about six months, during the inclement season, to earn a livelihood, his entry is allowed to stand. V. 13, p. 86

47. A speculative intent on the part of a contestant cannot affect his right to contest, but may be considered in weighing his testimony. A contestant against a homestead entry need not be qualified to enter. V. 13, p. 86

48. The right to contest a homestead entry is not limited to applicants for the land, but to any person, even an alien, and, after the entry is canceled as the result of the contest, the contestant can, if qualified, enter the land. V. 13, p. 199

49. The right to contest a homestead entry is not limited to an applicant for the land. V. 13, p. 26

50. At the date of initiating contest against homestead entries, a party was required to file an application to make entry, and parties acting in accordance with existing regulations should not be prejudiced thereby. V. 13, p. 171

51. The preferred right of a contestant will not be considered by the Land Department until it is asserted by the application for the land . . . . . V. 13, p. 5

52. The contestant in such a case is entitled to all the benefits incident to the successful termination thereof, although the facts alleged as the basis of such contest were of record prior thereto . . . . . V 13, p. 32

53. Though the informant may err in the method of his attack, the government will not be precluded thereby from taking advantage of information brought out in the progress of the trial . . . . . V. 13, p. 65

54. Failure to appeal from an adverse decision not excused on the plea of want of notice where the record shows notice to the attorney. The preliminary affidavit having been made before a clerk of the court, instead of the local office, the entry was voidable, but the defect might be cured before the intervention of an adverse claim . V. 13, p. 255

55. Final proof not having been submitted, a contest is allowed, though not begun within seven years from the date of entry. V. 13, p. 205

56. As in every case the entryman must show good faith, it is not of itself a suspicious circumstance that he offers final proof at the earliest period permissible under the law. V. 13, p. 208

57. As between two settlers on land covered by the entry of another, priority of right is held to be with the one who first settled and filed application for the land, together with the relinquishment of the former entryman . . . . . V. 13, p. 182

58. The right to file a soldier's declaratory statement and make homestead entry of land not covered thereby, within the life of such filing, was not conferred by the homestead law, nor has it been recognized by the regulations of the land department . . V. 13, p. 89

59. To secure the right initiated by a soldier's declaratory statement, entry, settlement and improvement must follow the filing within six months . . . . . V. 13, p. 282

60. By the filing and abandonment of a soldier's homestead declaratory statement, the right to make homestead entry is exhausted. The circular of December 15, 1882, so provided, and should govern cases arising thereafter . . . . . V. 13, p. 161

61. The right to file a soldier's homestead declaratory, and make entry thereunder, if exercised, does not prevent the commutation of the entry so made . . . . . V. 13, p. 4

62. That the entryman was in the military service, as an officer in the regular army, when he filed his declaratory statement, made his entry and proof, cannot effect his right under the homestead law, he having shown full compliance therewith in the matter of settlement, residence and improvement. V. 13, p. 4

63. A soldier is entitled to credit for military service, but must establish residence within six months from date of entry or filing, and continue residence, improvement, and cultivation for such period, not less than one year, as added to his military service, will make the five years required under the homestead laws . . . . . V. 13, p. 30

64. Under section 2305 of the Revised Statutes the time allowed for military service is deducted from the five years' residence required before final proof, but the quality of residence and cultivation provided for in said section is the same as under the general homestead law . . . . . V. 13, p. 208

65. No decision has been rendered allowing a discharged soldier to apply his term of service to reduce the five years' residence to make title at any time during the five years after filing he may select . . . . V. 13, p. 30

66. A soldier's widow who makes a homestead entry is required to reside on the land for the same length of time that the soldier would be if living. In case, however, of an entry made by a guardian for the benefit of minor orphan children of a deceased soldier, actual residence on the land is not required, a cultivation and improvement thereof in good faith for the prescribed period being regarded as a sufficient compliance with the law, under the present rulings of this office. V. 13, p. 102

67. A soldier's widow cannot waive her rights under the homestead law in favor of her minor children. The special privileges accorded soldiers of the late war in entering public lands can be conferred upon the minor orphan children of a deceased soldier only in in the case of the death or re-marriage of the widow . . . . . V. 13, p. 102

68. The children of a deceased soldier upon arriving at the age of twenty one years, are entitled to the exercise of their homestead rights as individual citizens of the United States, notwithstanding the fact that they may have enjoyed the special benefits that accrued to them during their minority by reason of their father's military service.. . V. 13, p. 102

69. Instructions showing how soldiers must make additional entries to which they are entitled . . . . . V. 13, p. 29

70. Certificate of right to make additional entry can issue for only the difference between the original entry and one hundred and sixty acres. The original entry being canceled for failure to make final proof, residence and cultivation will be required in case of entry under additional certificate . . . . . V. 13, p. 122

71. The certificate of right to make additional entry issued to the widow of a deceased soldier may properly contain a clause requiring her to show, at the time of applying to make entry, that she has not remarried.
V. 13, p. 244

72. An applicant for public land has the right at any time to withdraw his pending application and thus abate his claim.
V. 13, p. 199

73. On such withdrawal the applicant may properly revoke a power of attorney given for the prosecution of his claim . . V. 13, p. 199

74. Where through misapprehension as to the rights of the minor heirs, the original application for the right of additional homestead did not contain the names of all the minors, the entry is allowed to stand, patent to issue in the name of the minor orphan children of the deceased soldier . . . . . V. 13, p. 199

75. The right of minor children to enter and locate public lands as an additional homestead under the act of June 8, 1872, is personal property, and assignable. Under the laws of Minnesota the guardian of such minors could sell such right without any order of court.
V. 13, p. 11

76. A soldier's additional homestead entry, made through an agent in conformity with the practice authorized by the Department, is a valid appropriation of the land covered thereby . . . . . V. 13, p. 245

77. Proceedings where such certificate has been lost . . . . . V. 13, p. 210

78. Court proceedings under fraudulent soldiers' homestead certificate . V. 13, p. 167

Final Proof—Railroad, 27, 46, 56, 72. Scrip, 1.

Improvements.

Contest, 5; Homestead, 59, 62, 70; Railroad, 42; Scrip, 5; Settlement, 1.

Indemnity Lands.

Railroads, 8, 12, 54.

Indian Lands.

1. In contests involving Indian lands, each party must pay the expenses of taking his own testimony . . . . . V. 13, p. 268

2. Railroad right of way through the Indian territory . . . . . V. 13, p. 211

3. Status of the Oklahoma lands in the Indian territory . . . . . V. 13, p. 155

4. Land embraced within the limits of an executive order of reservation, made for a public purpose, but covered at the date of such order by a *prima facie* valid entry, is subject to said reservation on the cancellation of the entry . . . . . V. 13, p. 143

5. The allowance of original entry by the General Land Office will not preclude the Department from determining whether the land was legally subject to such entry when the case comes up for disposition on final proof . . . . . V. 13, p. 143

6. The grant by the act of Congress of July 2, 1864, to the Northern Pacific Railroad Company, of lands to which the Indian title had not been extinguished, operated to convey the fee to the Company, subject to the right of occupancy by the Indians.
V. 13, p. 223

7. The manner, time, and conditions of extinguishing such right of occupancy were exclusively matters for the consideration of the government, and could not be interfered with nor put in contest by private parties.
V. 13, p. 223

8. The agreement of the Sisseton and Wahpeton bands of Dakota or Sioux Indians for the relinquishment of their title was accepted on the part of United States when it was approved by the Secretary of the Interior, on the 19th of June, 1873. That agreement stipulating to be binding from its date, May 19, 1873, and the Indians having retired from the lands to their reservations, the relinquishment of their title, so far as the United States is concerned, held to have then taken place.
V. 13, p. 223

9. Upon the definite location of the line of the railroad on the 26th of May, 1873, the right of the company, freed from any incumbrance of the Indian title, immediately attached to the alternate sections, and no preemptive right could be initiated to the land, so long as the Indian title was unextinguished.
V. 13, p. 223

10. The condition of the lands usually known as the Indian Territory is that of lands which by treaty stipulations, statutory statements, and executive acts thereunder, have been set apart for the sole use and occu-

pancy of various Indian nations and tribes (and certain freedmen), so long as their national or tribal organizations are preserved.
V. 13, p. 56

11. The boundaries are defined only by the terms mentioned in the various treaties with these nations and tribes, and by the legislative action which has prescribed the limits of the contiguous States and Territories of the Union. Indian Territory has never been erected into a Territory of the United States by Congress.
V. 13, p. 56

12. The tract in question, although a part of the public domain, has not been set apart by any treaty stipulations, etc., and is, therefore, regarded as public land of the United States, but it is not within the limits of any State or Territory, nor is it attached to any land district for disposal as other public lands.
V. 13, p. 56

Private land claims, 7; Railroad, 10, 11, 47, 48, 52.

Iowa.

Swamp Lands, 8, 9.

Iron.

Mines.

Joint Entry.

There is no authority under the law for the allowance of a joint entry for lands settled upon after survey . . . . . V. 13, p. 35

Kansas.

Status of certified railroad land in.
V. 13, p. 250

Location.—*See Mines.*

Lodes.—*See Mines.*

Louisiana.

Swamp Lands, 10, 11, 12.

Military Reservation.

1. The establishment and occupancy of a cantonment by the military authorities excludes from entry, prior to the formal order of reservation, the land thus appropriated.
V. 13, p. 271

2. National Cemetery at Fort Custer.
V. 13, p. 215

3. In case of action under the second section of the act of July 5, 1884, the appraisers must take the oath of office, unite in the examination and appraisement of the land, and submit their joint or several reports as to the value thereof . . . . . V. 13, p. 215

4. Under the act of June 19, 1874, the lands in the Fort Reynolds Military Reservation, with the buildings thereon, were offered for sale after due appraisement, but subsequently, and prior to sale, the buildings were destroyed. *Held*, that said act authorizes the sale of the land at its appraised value.
V. 13, p. 189

Millsite.

Mines, 10, 11, 12.

Mines and Minerals.

1. The abstract of title required under the regulations must be brought down to the date of filing the application, or as close thereto as is reasonably practicable . . V. 13, p. 64

2. Miners will not secure a safe title by purchasing their mining claims from the rail road company in such cases. A safe title to known mineral lands can be obtained only from the government under the mining laws.
V. 13, p. 28

3. "The pending year" means the calendar year in which application is made.
V. 13, p. 122

4. The words "the full amount of work for the pending year," mean "an amount sufficient to make the claim a valid and subsisting one at the date of the filing of the application for patent" . . . . . V. 13, p. 122

5. The preliminary showing required upon application must embrace an amount of work or expenditure sufficient to make the claim valid and subsisting at the date of application.
V. 13, p. 134

6. Instructions relative to surveys of mining claims . . . . . V. 13, p. 196

7. The claimant for an alleged known lode should apply for patent in the usual way, notwithstanding the existence of a prior placer patent including it, in order that the controversy may be properly litigated in the courts.
V. 13, p. 39

8. A mineral location, under which all requirements of the law had been fairly met prior to the act of March, 1883, opening Alabama mineral lands to disposal as agricultural lands, confers a vested right that is not impaired by the provisions thereof.
V. 13, p. 29

9. Local officers are directed to forward at once all evidence pertaining to cases pending, submitted in response to requirements made by this office . . . . . V. 13, p. 28

10. Both a water-right and a millsite claim may be located on the same tract of land. Section 2337 R. S., contemplates the actual use or occupation by improvements or otherwise, for mining or milling purposes, of the land; and it is not satisfied by the use for said purposes of the water from springs situated thereon . . . . . V. 13, p. 197

11. At date of application for patent for a millsite there must be shown actual use or occupation thereof for the purposes of milling or mining. Mere intention or purpose on a certain contingency of performing acts of use or occupation thereon will not satisfy the law.
V. 13, p. 159

12. Where a mine owner claims a spring and uses the water, conducted through a ditch, at a distant smelter, such claim is not a millsite but a water right, which cannot be patented under the mining laws . V. 13, p. 110

13. Where a tract of land was certified to the Central Pacific Railroad Company as agricultural in character, no minerals being known at the time to exist therein, the legal title passed, and the discovery of minerals thereafter cannot affect the rights of the railroad company therein . . . . . V. 13, p. 207

14. Lands valuable for minerals other than coal and iron are not included in the grant to the Central Pacific Railroad Company.
V. 13, p. 28

15. Claimants must verify their declarations and applications by their own oaths, and they cannot delegate that duty. They can act by

an agent only in the matter of filing said papers and making the necessary payments. V. 13, p. 159

16. The actual finding of mineral on the land must be shown before its mineral character will be recognized . . V. 13, p. 198

17. Alabama lands classed as coal, but reported as not valuable, are subject to ordinary private entry under Homestead Law. V. 13, p. 78

18. Salt lands cannot be entered as placers under the mining laws . . . . . V. 13, p. 53

19. Saline lands can be sold only in those states which have had a grant of saline lands, which grant has been satisfied or the right of selection has expired. Saline lands are not for sale in the other states, nor in the territories . . . . . V. 13, p. 53

20. An application for patent for land embracing a school section in Dakota, alleged to be more valuable because of a stone-quarry than for agricultural purposes, should be received, notwithstanding an injunction from a Court . . . . . V. 13, p. 159

21. The insertion in a mineral patent of a clause reserving township rights is not authorized by law . . . . . V. 13, p. 231

22. Application for hearing to determine character of lands, must be accompanied by application to enter or select . . V. 13, p. 218

23. The mineral return of public lands will remain until otherwise proven by testimony. V. 13, p. 218

24. In view of the irregularities specified and hearings had or in progress, the selections mentioned are rejected, and hearings are ordered strictly in accordance with the rules and regulations applicable thereto . V. 13, p. 269

25. If such lands have been patented to a railroad, they are not subject to location or patent under the mining laws until the railroad patent has been set aside . V. 13, p. 28

26. Proceedings where error is discovered in survey of mining claim after issue of patent. V. 13, p. 53

27. Applications for a mineral patent being made for the land embraced within a prior townsite patent, adverse claim should be filed, or protest entered on behalf of said townsite; and in the absence of such action, suit to set aside the mineral patent thus issued, will not be advised. . . . . V. 13, p. 86

School Lands, 8.

Minnesota.

Swamp Lands, 13, 14.

Minors.

Homestead, 9, 66, 67, 68, 74, 75.

Mortgage.

Appeal, 4; Pre-emption, 20.

Notice.

1. Though actual notice to the entryman and his transferee appears of record, it will not confer jurisdiction in the absence of legal service thereof . . . . . V. 13, p. 253

2. Publication of notice is only allowed under strict compliance with the Rules of Practice, and one of the essential requirements of such rules is the contestant's affidavit showing that personal service cannot be made. . V. 13, p. 2

3. Under Rule 35 of Practice, thirty days' notice of the hearing before the local officer is sufficient, though an earlier date may be named in said notice for taking testimony elsewhere . . . . . V. 13, p. 76

4. Contestants are not required to search the residence of parties living outside the State or Territory. Notice can be given by publication in such cases, but if a contestant *has knowledge* of the residence of the party outside the State or Territory, he should get personal service or attempt to do so . . . V. 12, p. 98

5. In the absence of proper service of notice, objection to his jurisdiction is not waived by proceeding to trial after a motion to dismiss is overruled . . . . . V. 13, p. 98

6. Service of notice by publication set aside, where by ordinary diligence personal service could have been obtained . . . V. 13, p. 76

Affidavit, 2; Contest—Final proof, 12; Homestead, 41, 54; Pre-emption, 15; Review, 7.

"No Man's Land."

Status of . . . . . V. 13, p. 125

Oklahoma.

Indians, 3.

Oregon.

Swamp Lands, 15 to 19.

Osage Lands.

The evidence shows that Robey was a qualified pre-emptor, and that his entry was *bona fide*, and not made for speculative purposes . . . . . V. 13, p. 238

Patent.

1. Jurisdiction to consider an application under the act of June 15, 1880, to purchase land for which patent has issued, may be conferred upon the Land Department by the surrender of said patent, where the entry falls within the terms of the statute . V. 13, p. 250

2. A patent erroneously issued for land in excess of the amount actually purchased, is no bar to the subsequent issue of a patent to another for such excess . . . . V. 13, p. 139

3. A patent, issued in contravention of the record, is without authority and void, and will not be delivered by the Department. V. 13, p. 57

4. Suit to set aside patent not advised, in the absence of any interest on the part of the Government . . . . . V. 13, p. 11

5. Where a tract of land has been improperly certified to a State, the control by the Executive Department over such tract ceases. Only by regular judicial proceedings can the title of the State to such tract be set aside and annulled. . . . . V. 13, p. 83

Application to enter, 5; Homestead, 39, 74; Mines, 21, 26, 27; Private land claims, 5 to 16; Railroad, 12, 36, 57; Swamp land, 15.

Payment.

Pre-emption, 19.

Placer.—*See Mines.*

Possession.

Contest, 25.

Poverty.

Homestead, 43, 46.

Practice.

1. The taking of depositions on written

interrogatories is provided by the Rules of Practice. . . . . V. 13, p. 63

2. What testimony must be taken before the designated officer . . . . . V. 13, p. 98

3. Proceedings before the district officers are controlled by the Rules of Practice adopted by the Department, and not by the laws regulating civil procedure in the States and Territories . . . . . V. 13, p. 28

4. When a point has been settled by decision it forms a precedent which the Department will not depart from, unless clearly contrary to principle . . . . . V. 13, p. 243

5. The departmental decision herein of April 3, 1886, settled but two questions, one of practice, and the other as to whether the State was concluded by the decision of the Department rendered January 18, 1884. V. 13, p. 214

Appeal, Contest.

Pre-emptions.

1. The intervention of a valid adverse claim cuts off the right of a pre-emptor who is not protected by an actual prior settlement. V. 13, p. 18

2. A pre-emption filing constitutes an adverse claim within the meaning of the proviso to the second section of such act, and bars the right of purchase thereunder. V. 13, p. 40

3. The filing of a declaratory statement is not made a condition precedent to the existence of the pre-emption right, but is merely a protection against the claims of subsequent settlers . . . . . V. 13, p. 66

3. The right of a pre-emption settler, who did not file within the statutory period, is not defeated by the entry of an intervening homesteader who has failed to comply with the law . . . . . V. 13, p. 201

5. The pre-emptor not having exercised due diligence in ascertaining the status of the tract filed for, will not be allowed to amend his filing in the event that he subsequently discovers that a portion of his claim is subject to the right of another . . . . . V. 13, p. 55

6. Though the record filing preceded settlement, a second filing is not necessary to protect the pre-emptor in subsequently acquired settlement rights . . . . V. 13, p. 27

7. The settlement of a pre-emptor who does not file his declaratory statement, is not protected from the subsequent homestead entry of another who complies with the law. V. 13, p. 232

8. A pre-emption claim based on the settlement and filing of one who had previously exhausted his pre-emptive right is illegal, and the transmutation thereof to a homestead entry will not exclude intervening adverse claim. V. 13, p. 122

9. The right of a deserted wife to make entry rests in the statutory privilege accorded to the "head of a family;" but the fact of desertion must be affirmatively shown before the right of entry accrues . . . V. 13, p. 148

10. Under the local laws the ownership of land by the husband and wife, as shown herein, does not disqualify the former as a pre-emptor . . . . . V. 13, p. 18

11. A pre-emption entry, made through mistake of the law, by one disqualified by reason of removal from land of his own to make settlement, in the absence of an adverse claim, is referred to the Board of Equitable Adjudication, upon a showing of residence subsequent to the sale of the land from which said removal was made . . . . V. 13, p. 19

12. The filing, settlement, and improvement of one who exhausted his pre-emption right, form no foundation for a lawful claim, and possession thereunder will not defeat the location of a soldier's additional homestead by another. . . . . V. 13, p. 90

13. Final proof should hot be submitted during the pendency of the contest, though the same was prematurely allowed. V. 13, p. 163

14. A contest against a pre-emption claim should not be permitted before offer to make final proof therefor . . . . V. 13, p 163

15. The legal presumption in favor of the regularity of the notice given as shown by the record will not be disturbed by the mere allegation that such notice was not served. V. 13, p. 90

16. Final proof should always receive careful examination and be rejected, though technically complete, if deemed unsatisfactory. V. 13, p. 183

17. The proof submitted, not showing conclusively good faith in the matter of residence, is rejected, and additional evidence required. V. 13, p. 32

18. Under the circumstances of this case, the pre-emption entry of 187.24 acres is allowed to stand . . . . . V. 13. p. 103

19. Payment must be made at the time final proof is submitted . . . . . V. 13, p. 200

20. Questions arising on inquiry into the validity of an entry will not be affected by a sale or mortgage after the issuance of final certificate, though the right of such purchaser or mortgagee to appear and show that the entryman complied with the law will be duly recognized. . . . . V. 13, p. 90

21. An entry made under erroneous informaton from the Register that the tract was vacant, is fully subject to the assertion of a prior pre-emption claim then of record. V. 13, p. 18

22. The erection of a building to be used for purposes of trade is not an act of settlement under the pre-emption laws. A party whose principal occupation is that of business or commerce on the land, living in his store, and who uses his pre-emption claim simply to pasture his horses and mules, when not engaged in freighting, and some cattle obtained in settlement of store debts, does not comply with the pre-emption law . . . V. 13, p. 56

23. As the ten pre-emption claims herein considered were fraudulently procured to be be made in the interest of a lumber company, they are accordingly rejected. . V. 13, p. 183

Final Proof, Osage Lands, Railroads, 41, 56, 64.

Preference Right.

1, The preference right of entry, accorded

under the second section of the act of May 14, 1880, is not defeated because the facts, showing the illegality of the contested entry, were of record in the General Land Office.
V. 13, p. 61

2. The thirty days accorded to the successful contestant within which to make entry, begins to run from the receipt of notice of cancellation . . . . . V. 13, p. 181

3. Failure to assert the preference right of entry within the statuiory period after cancellation, deprives the successful contestant of all rights gained by the contest, and he cannot thereafter be heard as a party in interest to object to the subsequent purchase of land under the act of June 15, 1880 . V. 23, p. 160

4. The relinquishment of the contestant's preference right of entry leaves the land open to the first legal application on cancellation of the entry . . . . . V. 13, p. 254

Contest. 38, 39, 40; Homestead, 51, 52; Settlement, 9.

Private Entry.

1. Any isolated tracts found vacant in Ohio are regarded as withheld from disposal from erroneous marks on the plats and records, or from other causes, and therefore are not subject to disposal at ordinary private entry until restored to market by public notice V. 13, p. 59

2. Tracts withheld from public sale through erroneous markings on the plats or record, or by orders of the General Land Office, are not subject to private entry except after public notice of restoration . . . . . V. 13, p. 140

Railroad, 37.

Private Land Claim.

1. The judgment of a State court that would be received in the courts of the United States as conclusive, will be similarly accepted in this Department . . . . . V. 13, p. 178

2. The purchaser of real estate at a succession sale is bound to look to the jurisdiction of the court and its order directing that sale, and if they are sufficient, he is protected.
V. 13, p. 178

3. District courts of Louisiana have unlimited original jurisdiction in probate and succession matters, and decrees rendered therein with respect to succession sales are conclusive as to all facts necessary to convey title.
V. 13, p. 178

4. The claimant of an unconfirmed private land grant is entitled to a preliminary survey, on the deposit of a sufficient sum to cover the expense thereof . . . . . V. 13, p. 23

5. A confirmatory statute is effectual in passing title, and the patent issued thereunder should follow the provisions contained in such statute . . . . . V. 13, p. 215

6. Rule upon the grant claimants to show cause why the survey should not be closed upon the line fixed by the court as the limit of said grant. . . . . V. 13, p. 45

7. On review, the Department adheres to its former decision, and recommends, in opening to entry the lands in question, the adoption of the regulations formulated in the case of the Sante Sioux Reservation . V. 13, p. 35

8. The claims under consideration are complete French claims, and the law of the Government has jurisdiction to consider and pass upon their validity, and to segregate them from the public domain. . . . V. 13, p. 186

9. The hearing before the local officers was not had upon an application filed under the act of June 22, 1860 . . . . V. 13, p. 186

10. As the determination of the status of the private claim was reached in an *ex parte* proceeding, without notice to adverse parties, the right of the State is not affected thereby, and the case is accordingly remanded for consideration under the hearing heretofore ordered to ascertain the nature of the claims set up by the State. . . . . V. 13, p. 81

11. A private cash entry, upon one certificate, will not be allowed for more land than can be described by sub-divisions in the ordinary form of cash certificate and patent.
V. 13, p. 140

12. The decision of the Commissioner holding that the survey herein should not be disturbed became final for want of appeal, and the showing now made by the present alleged owners of said claim is too indefinite to warrant further investigation of the case.
V. 13, p. 56

13. Under section 8 of act of June 22, 1854, a preliminary survey is authorized by which the extent of the claim may be properly defined; and the Surveyor-General's return thereof should be accompanied by his decision as to the character of the claim and whether the same should be confirmed
V. 13, p. 44

14. The boundaries of the Dewees Grant, as established, being well known to the claimants thereunder at the time of the survey, and when subsequent settlement was made by others upon lands excluded therefrom, the grant claimants are estopped from asserting that the grant in fact embraced the lands so excluded and disposed of under the settlement laws . . . . . V. 13, p. 82

15. Under the Donation act settlement and residence should be contemporaneous, and the settlement must have been commenced within the time specified in said act.
V. 13, p. 59

16. Suit to set aside the patent issued on Rancho Laguna de Tache will not be advised on allegations that the grant was of fraudulent character, and its confirmation procured through fraud, as the validity of the grant was the main question in issue in the court that rendered such decree of confirmation.
V. 13, p. 94

Railroad, 14, 56, 59, 60.

Publication.

New publication, but not new proof, will be required where original proof was erroneously made before wrong officer.
V. 13, p. 146

Contest, 8; Final proof, 14; Notice—Private entry, 1, 2.

Public Notice.

1. No. 904. Removal of the Land Office from Bodie to Independence, California.
V. 13, p. 47

2. No. 905. Establishment of the Bent Land District in the State of Colorado. V. 13, p. 204

Quarter Section.

1. An entry covering more than one hundred and sixty acres will be canceled to the extent of the illegal excess, but prior to such cancellation the entire tract is reserved from all other appropriation. . . . . V. 13, p. 27

2. The rule requiring an entry to approximate one hundred and sixty acres must be followed, though the land has passed to a purchaser for a valuable consideration. V. 13, p. 172

Pre-emption, 18.

Railroad.

1. Status of certified railroad lands in Kansas. . . . . V. 13, p. 250

2. It is a tacit condition, annexed to or implied in the charter of every private corporation, that the government may resume its corporate franchise for a misuser or a non-user thereof. . . . . V. 13, p. 272

3. Where, in a proceeding by the attorney-general in behalf of the State for the dissolution of a corporation under the statute, the facts clearly bring the case within its terms, it is mandatory upon the court to declare a forfeiture . . . . . V. 13, p. 272

4. The statute (Gen. St. Minn. 1878, *c.* 76, § 11,) provides that the suspension of its lawful business by a railroad company for one year shall be a ground of forfeiture "of its privileges and franchises acquired under the laws of this State." But the corporation is not to be deemed dissolved until such forfeiture is judicially ascertained and declared. V. 13, p. 272

5. The right to hold exempt from taxation lands granted to a railroad corporation in aid of its principal enterprise, is a franchise, but ancillary and subordinate; and the right to exercise such franchise, and to continue its corporate existence for such purposes only cannot lawfully survive after a sale of its railroad, and the abandonment of its principal business as a railroad corporation, unless by the authority of the legislature. V. 13, p. 272

6. *Held*, in *quo warranto* proceedings in behalf of the State, that, upon the facts disclosed and admitted upon record, a case is made warranting a judgment of forfeiture, and a dissolution of both corporations. V. 13, p. 272

7. The right of this company as the legal successor to all the benefits acquired by the State under the original grant, and the amendments thereto, was recognized in a decision of a federal court having full jurisdiction of the question, and such decision will be accepted as authoritative, and warranting the adherence of the Department to its former like determination . . . . . V. 13, p. 150

8. It is accordingly held, in the absence of statutory direction requiring the application of the co-terminous principle, that for lands lost in place, opposite the southern part of the road, constructed within the time specified in the original grant, the State is entitled on behalf of the company to select and receive lieu lands from the indemnity limits in the northern half of said grant . . . . V. 13, p. 150

9. The withdrawal of the lands upon filing the map of the general route of the road, for twenty-five miles on each side of the line, indicated, protected the lands against the attaching of any other right as against the Railroad Co., until the filing of the map of definite location . . . . . V. 13, p. 258

10. The extinguishment of Indian title contemplated by the second section of the grant to this company had reference to lands lying within what was then known as the territory of the Indians, and not to such as were embraced within technical reservations. V. 13, p. 173

11. As the Indian title to these lands was not extinguished until after the definite location of the road, they were accordingly excluded from the grant . . . . V. 13, p. 173

12. Suit is advised to vacate the patents issued to said company for the even sections in Allen county, Kansas (1) in the indemnity limits of its road where overlapped by the primary limits of the Leavenworth, Lawrence, and Galveston road, and (2) in the common indemnity limits of the two roads on the ground that as these sections were reserved to the United States. . . . . V. 13, p. 92

13. The decision leaves to the determination of the Department of Justice, all questions arising on the alleged rights of parties claiming as innocent purchasers from said company . . . . . V. 13, p. 92

14. The Moquelamos Grant was finally rejected February 13, 1865, after which the lands within the exterior boundaries of the grant ceased to be *sub judice*, and became public lands to the odd sections of which, within twenty miles of the line of the road, the right of the railroad company attached, and became indefeasible, immediately upon the filing of the map of definite location of the road, and the acceptance thereof as such by the Secretary of the Interior. V. 13, p. 258

15. The map of the route of said road, as finally located and constructed, filed with the Secretary of the Interior February 1, 1870, and accepted as such by that officer, is the map of definite location . . . . V. 13, p. 258

16. Matters of estoppel as to lands lying east of range line, between ranges 7 and 8 east, Mt. Diablo meridian, discussed. V. 13, p. 258

17. The map of the route of the Western Division of the C. P. Railroad, filed with the Secretary of the Interior December 8, 1864, is the map of the General Route, and not of the line as "definitely fixed," within the meaning of the Land Grant Act of 1862. V. 13, p. 258

18. Lands in Walla Walla land district, Washington Territory, withdrawn on the line of amended general route filed by the Northern Pacific Railroad Company, February 21, 1872, lying south of the Territory affected by the definite location of said road and east of

the line showing the forty-mile limit of that point of the route not yet definitely located, are restored to settlement and entry.

V. 13, p. 212

19. When the general route of the road provided for in section six of the act of July 2, 1864, was fixed and information thereof was given to the Land Department by the filing of a map thereof with the Secretary of the Interior, the statute withdrew from sale or pre-emption the odd sections to the extent of forty miles on each side thereof; and by way of precautionary notice to the public, an executive withdrawal was a wise exercise of authority . . . . . V. 13, p. 223

20. The general route may be considered as fixed when its general course and direction are determined, after an actual examination of the country or from a knowledge of it, and it is designated by a line on a map showing the general features of the adjacent country, and the places through or by which it will pass . . . . . V. 13, p. 223

21. That part of section three of said act, which excepts from the grant lands reserved, sold, granted or otherwise appropriated, and to which a pre-emption and other rights and claims have not attached, when a map of definite location has been filed, does not include the Indian right of occupancy within such "other rights and claims," nor does it include pre-emptions where the sixth section declares that the land shall not be subject to pre-emption . . . . . V. 13, p. 223

22. Proceedings of the local officers when applications to file on or enter lands claimed by the Northern Pacific Railroad Company.

V. 13, p. 107

23. Under a grant of lands to a State for the purpose of aiding internal improvement, the application of the lands, or the proceeds of the same, to the trust, rests in the good faith of the State, and in the absence of the statutory authority, the Department cannot control the discretion of the State in the disposal of said lands. No action has been taken by the legislative or judicial proceedings to enforce a forfeiture of the grant under which this company claims, hence the lands therein granted have not reverted to the United States, though the road was not constructed within the period prescribed . . V. 13, p. 150

24. The odd-numbered sections forfeited by said act within the conflicting limits of this road and the Northern Pacific are withheld from entry pending an equitable settlement of the rights of the latter company.

V. 13, p. 233

25. The price of the alternate ungranted sections, having been increased by statute, cannot be reduced on the forfeiture of the grant in the absence of express authority.

V. 13, p. 233

26. The informal notation of the words "set aside," opposite the description of a tract of land in an approved list of indemnity school selections, will not be treated as a rejection or cancellation of said selection.

V. 13, p. 286

27. The land involved is within the withdrawal ordered August 23, 1880. Waldon settled July 25, 1884. Land surveyed December 13, 1884, and township plat in local office thirteen days thereafter, selected by the company January 8, 1885, and Waldon's application to make homestead entry was rejected on account of such selection. The action of the local officers rejecting the application is reversed, and the selection by the company declared defective and illegal . . V. 13, p. 110

28. The effect of such failure is only to raise a question between the Government and the company as to the delivery of title.

V. 13, p. 284

29. The right of the company to land that was in a condition to pass at the date of a definite location is not impaired by the failure of the company to pay for the survey.

V. 13, p. 284

30. Status of certain tracts within the limits of the grant to the Hastings and Dakota Railway company . . . . . V. 13, p. 165

31. The grant to the Hastings and Dakota Railroad embraced only such lands, within its limits as were vacant, unappropriated and unreserved at the date of the grant, and the land in question, being embraced in a homestead entry at the date of the grant, was not included in the terms of the grant.

V. 13, p. 149

32. Recommendation that court proceedings be instituted to recover title to certain lands erroneously patented to this company.

V. 13, p. 111

33. The Atlantic and Pacific Co. has no grant of lands beyond the point where its line reaches the Pacific at San Buenaventura, and its designation of a route beyond that point to San Francisco was without authority of law, and void, and hence the withdrawals based upon such unlawful designation were without basis, unauthorized, and of no effect.

V. 13, p. 5

34. Where a railroad grant is for even sections and the adjacent odd sections are raised in price, such odd sections are reserved for the purpose of compensating the United States for the granted lands. Such reserved sections are not subject to selection by another rail road company under a grant of odd sections along substantially the same line. V. 13, p. 135

35. At the date of the grant and also when it took effect, the tract in question was covered by a *prima facie* valid school selection, which is held to have excepted said tract from the railroad grant, though the selection was subsequently disallowed . . . . V. 13, p. 107

36. The Department adheres to its former recommendation of suit to vacate patents issued to this company for certain even sections of land in Allen County, Kansas.

V. 13, p. 257

37. As in the construction of a statute the obvious purpose thereof should not be defeated by literal interpretation, the word "and" is construed "or" . . . V. 13, p. 150

38. The status or a tract of land held to be excepted from the grant by the existence of a

prima facie valid entry when said grant became effective, is not affected by the subsequent declaration of the entryman that the entry was not made in good faith. V. 13, p. 21

39. The vacant land outside the six (6) mile and within the fifteen (15) mile limits of the Ontonagon and State Line, and the Marquette and State Line Railroads, and not falling within the limits of the withdrawal for the Marquette, Houghton and Ontonagon Railroad, are subject to private entry, having been restored June 15, 1868 . . V. 13, p. 184

40. Lands embraced within the scope of the Dunmeyer decision of the United States Supreme Court are not included in the act of January 13, 1881 . . . . . V. 13, p. 124

41. The residence and possession of a qualified pre-emptor covering the date of the grant, withdrawal and definite location, excepted the land from the operation of the grant, though the settler subsequently abandoned said land and perfected a pre-emption claim elsewhere, V. 13, p. 250

42. Under this act only those purchasers from the railrood company who made actual settlement and improvements are protected. Improvements alone will not avail. V. 13, p. 124

43. Instructions under the law of January 13, 1881 . . . . . V. 13, p. 68

44. The words "to be selected within twenty miles from the line of said road," occurring in the granting clause of the act of July 25, 1886, do not operate to make the grant a float, but serve only to define the limits of the grant . . . . . V. 13, p. 164

45. Priority of grant determines the right to land lying within the common granted limits . . . . . V, 13, p. 164

46. Precedence as against a railroad grant, is accorded a homestead entry made on the day when the map of definite location was filed . . . . . V. 13, p. 286

47. Under the second section of the grant to this company, its rights within such territory took effect on the extinguishment of the Indian title . . . . . V. 13, p. 284

48. The sixteenth article of the treaty of April 29, 1863, with the Sioux, did not reserve the lands therein described as lying "north of the North Platte river and east of the Big Horn mountains," but provided that such land should be regarded as unceded Indian territory . . . . . V. 13, p. 284

49. The lands within the Territory of New Mexico, formerly granted to this company, but declares forfeited and restored to the public domain by the act of July 6, 1886, are opened to entry and settlement, and the price of such lands as well as the even-numbered sections is fixed at $2.50 per acre. V. 23, p. 233

50. Certain lands in the Walla Walla land district, Washington Territory, are restored. V. 13, p. 201

51. A *prima facie* valid school selection existing when the grant took effect, excepted the land embraced therein from the operation of the grant, and the subsequent discovery of the invalidity of the selection will not inure to the benefit of the company's claim. V. 13, p. 21

52. The right of a road having attached to specific tracts by its definite location, the subsequent extinction of an Indian title will not bring the land, excluded thereby, within the operation of the grant . . . . . V. 13, p. 19

53. The inadvertent marking on the records of the local office of a warrant location constitutes no appropriation or reservation of the land covered thereby . . . V. 13, p. 202

54. The selection of certain indemnity lands by the State of Wisconsin for this company is refused . . . . . V. 13, p. 104

55. Odd sections within the overlapping primary limits of the grants to the Central Pacific and the California and Oregon Railroad Companies, excepted out of the grant to the former company, passed to the latter, if vacant public land when the right of said road attached . . . . . V. 13, p. 42

56. Selections made while the land is *sub judice* are invalid. A rejected application to file a pre-emption declaratory statement, pending on appeal, is no bar to the reception of a homestead entry . . . . . V. 13, p. 41

57. A suit is not recommended to determine the validity of certain patents issued to this company . . . . . V. 13, p. 256

58. An entry made after the map of definite location had been filed and accepted, but before notice of withdrawal thereunder was received at the local land office, is confirmed by the first section of the act of April 21, 1886 . . . . . V. 13, p. 174

59. By the decision of the Department, the Higley Survey is now accepted as properly defining the boundaries of the Moraga claim. V. 13, p. 172

60. As a reservation of this tract under the private claim of San Ramon terminated prior to the time when the right of the company attached, such reservation did not except the land from the railroad grant . . V. 13, p. 172

61. Though the power of approval rests with the Secretary of the Interior, it is proper that the tracts showing selections under this act should be submitted through the General Land Office, accompanied with its recommendations thereon . . . . . V. 13, p. 70

62. Each station taken must represent its particular section of ten miles, and cannot be selected in any other section. But selections thus made may be disapproved by the Department, where it appears that the true intent of the act has not been observed. . V. 13, p. 70

63. Prosecution, civil and criminal, advised for trespass upon an odd section within the primary limits of the Northern Pacific grant, covered by an order of withdrawal, pending definite location of the road. . . V. 13, p. 46

64. The pre-emption claim of the settler, as declared in his filing, not covering the tract in dispute, the land is held to have been excepted from the grant thereby, though a small part of his improvements, placed there prior to survey, were on said tract. . . . V. 13, p. 9

65. Priority in selection determines the right to land within common limits, where such right is wholly dependent upon the act of selection . . . . . V. 13, p. 19

66. Under the grant of July 25, 1866, to the California and Oregon R. R. Co., the right of the company attached to its granted lands on the filing of the map of survey of its road in the General Land Office . . . . . V. 13, p. 42

67. A decision of the General Land Office, not appealed from, erroneously holding that a tract of land passed under the grant, will not preclude the Department from considering the legal status of such tract under said grant on the subsequent application of a new party claiming the right of entry . . V. 13, p. 136

68. Odd-numbered sections within the primary limits of the grant, which were vacant and unappropriated at the definite location of the road, passed to the company, although such lands at the date of the grant may have been otherwise appropriated . V. 13, p. 249

69. The approved plat, showing the right of way and location of station grounds, being filed in the local office, entries thereafter made of land crossed by said line of road are subject to the right of the company under said act, and due reservation will accordingly be made in patents that issue on such entries.

V. 13, p. 70

70. "Remedial statutes must be construed according to the spirit." Such statutes must be construed liberally, and where the meaning is doubtful, must be construed to extend the remedy. In remedial cases the construction of statutes is extended to other cases within the reason and rule of them.

V. 13, p. 81

71. The act of June 22, 1874, is merely permissive, and not mandatory. The beneficiaries under railroad grants may, at their option, execute relinquishments and select lieu lands under its provisions, or decline to do so. Nothing in the act authorizes railway companies, however, to prescribe conditions upon which relinquishments may be made or accepted . . . . . V. 13. p. 91

72. Instructions under the act to protect homestead settlers within railway limits.

V. 13, p. 124

Indians, 2, 6 to 12; Mines, 2, 13, 14, 25; Townsite, 2.

Register and Receiver.

1. Must report the amount received at office under the act of March 3, 1883, by fiscal years . . . . . V. 13, p. 56

2. Local officers' compensation.

V. 13, p. 159

3. The local office has no authority, on the motion of an adverse claimant, to expunge from the record a duly recorded entry.

V. 13, p. 97

4. In addition to the registration of notices of hearings and decisions, as provided in circular of October 15, 1884, it is hereby directed that all notices required to be given by you of decisions be registered . . . . V. 13, p. 196

5. The action of Registers and Receivers in accepting proof and issuing certificates is not final nor conclusive, but preliminary only, subject to review and final action by the Land Department . . . . . V. 13, p. 13

6. The quality of a settler's residence will not be considered in anticipation of a proposed application for the right of entry.

V. 13. p. 5

Appeal, 5. 7. 21; Application to enter, 1; Attorney, 4; Final Proof, 16; Practice, 3; Pre-emptions, 21.

Relinquishment.

1. All rights of an entryman to be heard in a contest cease on relinquishment. V. 13, p. 97

2. The right to file a relinquishment is not dependent upon the legality or illegality of the entry concerned . . . . . V. 13, p. 27

3. A relinquishment executed prior to contest, and filed after the same was properly dismissed, cannot be held to inure to the benefit of the contestant . . . . . V. 13, p. 52

4. It is however held that a relinquishment, executed before the first contest, but filed after the said application, may inure to the benefit of the second contestant in the event that the allegation of fraud is established.

V. 13, p. 52

5. It is competent for the Department to investigate and determine whether a relinquishment was executed in good faith, or whether in such matter fraud was practiced upon the Government . . . . . V. 13. p. 279

6. The charge as laid by the contestant could not be maintained, but as she subsequently during the pendency of the contest, and prior to the intervention of any adverse right, filed the entryman's relinquishment, her right to make entry of the tract involved is recognized . . . . . V. 13, p. 147

7. A relinquishment, filed with notice of a pending contest and application to enter, must be regarded as resulting from the contest, and therefore inuring to the benefit of the contestant . . . . . V. 13, p. 38

8. Rights lost through the refusal of the local officers to act upon a relinquishment, and failure to appeal therefrom, may not be set up to defeat an intervening adverse claim.

V. 13, p. 62

9. As the evidence shows that claimant stood ready to sell, and would undoubedly have delivered his relinquishment to contestant, had contestant lived up to the agreement made, or to any other person who was willing to pay what he considered it worth, the entry is held to have been made with speculative intent, and held for purposes of sale.

V. 13, p. 33

Desert Lands, 4; Hearing, 4; Preference Right, 4; Timber Culture, 9, 10, 18.

Repayment.

Excess.

Reservation. (*See Indians, Military, School Lands.*

Residence.

1. Cultivation and improvement cannot be accepted as the equivalent of residence. Evidence is not admissible as to acts performed on the land after the initiation of the contest.

V. 13, p. 270

2. Continuous residence will be excused where the circumstances are such as to fill the mind of a peaceable man with the belief that if he went upon the land, or persisted in attempts to do so, it would be at the risk of his life . . . . . V. 13, p. 66

3. Where lack of good faith is shown, sickness cannot be held as an excuse. V. 13, p. 210

4. Residence is constituted by residing upon the land to the exclusion of a home elsewhere. Mere visits to the land are not sufficient . . . . . V. 13, p. 210

5. A house or double house built on the dividing line between two claims is not a compliance with the settlement laws as to residence . . . . . V. 13, p. 255

6. In the absence of proof to the contrary, the place where a married man's family resides is held to be his residence . V. 13, p. 15

7. One holding the position of postmaster cannot be heard to say that his residence is beyond the delivery of his office. V. 13, p. 172

8. The residence of a public official is presumptively consistent with the law creating the office . . . . . V. 13, p. 246

Contest, Homestead, 8, 11 to 16. 20, 21, 25 to 29, 43 to 46, 62, 63, 64, 70.

Res Judicata.

A ruling by the Commissioner of the General Land Office on a question of priority as between two applicants, is not such a final decision as to preclude his successor from considering the final proof subsequently submitted by the successful party in the former suit . . . . . V. 13, p. 85

Restoration of Right.

Petitions for the restoration of the right to file or enter land, not accompanied by an application for some specific tract, will not be considered . . . . . V. 13, p. 266

Review.

1. Motions for a review of decisions of the Secretary should be filed with the Secretary. V. 13, p. 26

2. A second application for review will not be entertained by the Department. V. 13, p. 3

3. On motion for review there was tendered, as newly discovered evidence, a certificate from the Commissioner of the State Land Office of Minnesota to the effect that said State had conveyed to plaintiff, by deed, the land in question. *Held*, that as the evidence offered was not the best of which the case was susceptible, and could not be considered newly discovered, because of record, the motion must be denied . . . . . V. 13, p. 69

4. A decision rendered on the appeal of an entryman, rejecting the final proof, will not be reviewed on the allegation of a transferee that he did not receive notice of such decision. V. 13, p. 243

5. Where a motion for review assails a judgment as not justified by the evidence, the particular evidence on which the change of ruling is claimed should be specifically set forth . . . . . V. 13, p. 158

6. The decision of the Department rejecting a survey and refusing to pay therefor will not be reviewed where it appears that application for such action was not made within the proper time, and that prior to such application the townships covered by said survey had been re-surveyed and the work paid for under a subsequent contract . . V. 13, p. 158

7. Notice of a motion for review or rehearing must be given within the time allowed for such motion . . . . V. 13. p. 185

Revised Statutes.

Section 190 . . . . . V. 13, p. 269
Section 295 . . . . . V, 13, p. 212
Section 409 . . . . . V. 13, p. 212
Section 452 . . . . . V. 13, p. 157
Section 1757 . . . . . V. 13, p. 269
Section 1946 . . . . . V. 13, p. 64
Section 2186 . . . . . V. 13, p. 79
Section 2238 . . . . . V. 13, p. 145
Section 2257 . . . . . V. 13, p. 226
Section 2259 . . . . . V. 13, pp. 67, 90
Section 2261 . . . . . V. 13, p. 90
Section 2262 . . V. 13, pp. 115, 119, 249
Section 2265 . . . . V. 13, pp. 201, 232
Section 2269 . . . . . V. 13, p. 239
Section 2273 . . . . . V. 13, p. 57
Section 2283 . . . . V. 13, pp. 238, 240
Section 2288 . . . . V. 13, pp. 115, 148
Section 2289 . V. 13, pp. 31, 79, 134, 162 163, 171, 219
Section 2290 . . V. 13, pp. 17, 31, 66, 255
Section 2291 . . . V. 13. pp. 17, 18, 171
Section 2294 . . . . V. 13, pp. 161, 255
Section 2297 . . . . . V. 13, pp. 14, 31
Section 2298 . . . . . V. 23, p. 219
Section 2299 . . . . . V. 13, p. 119
Section 2301 . V. 13, pp, 15, 18, 102, 119, 134, 219
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5. After due investigation and adjudication under the fifth clause of Section 2488 R. S., the lands were certified to the State as swamp land, and the character of the same may not now be called in question on the mere allegation that they were in fact not of the character granted . . . . . V. 13, p. 185

6. The United States could convey, by patent, no title under the swamp grant for land covered by navigable waters of the State. A patent of such character having been improvidently and illegally issued, through which a great public wrong may be perpetrated, it is

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7. In adjusting claims for indemnity, the Commissioner of the General Land Office is authorized to order re-examinations in the field of the land for which indemnity is claimed in Iowa. . . . . V. 13, p. 213

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10. Application to include lands, as swamp and overflowed, that are designated in the field notes as "low prairie, not arable," "not fit for cultivation," "bottom lands," "low ground," and "low, wet lands," is denied. Where the field notes are adopted by the State as a basis for adjustment of the swamp grant of 1850, the State cannot repudiate such basis, because the result is different from what was expected . . . . . V. 13, p. 71

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March 3, 1875 (18 Stat. 474). Colorado Enabling Act . . . . . V. 12, p. 306
March 3, 1875 (18 Stat. 482). Railroad Right of Way . . . . . V. 12, pp. 7, 185, 186
April 21, 1876 (19 Stat. 35). Settlers on Railroad Lands . . . . . V. 12, pp. 280, 302
July 5, 1876 (19 Stat. 75). Kansas Indian Lands . . . . . V. 12, p. 59
March 1, 1877 (19 Stat. 267). Indemnity School Sections in California . . V. 12, p. 94
March 3, 1877 (19 Stat. 377). Desert Lands. V. 12, pp. 59, 259, 314
March 3, 1877 (19 Stat. 403). Final Homestead Proof . . . . . V. 12, pp. 18, 51, 222
June 3, 1878 (20 Stat. 88, 89). Timber and Stone Act. V. 12, pp. 18, 44, 126, 185, 209, 305
June 3, 1878 (20 Stat. 91). Publication of Notices of Contests . . . . . V. 12, pp. 295, 296
June 14, 1878 (20 Stat. 113). Timber Culture.

V. 12, pp. 21, 71, 98, 157, 161, 193, 229, 230, 238, 276, 285, 301
January 28, 1879 (20 Stat. 274). Land Scrip. V. 12, p. 62
March 3, 1879 (20 Stat. 352). Surveys. V. 12, pp. 62, 124
March 3. 1879 (20 Stat. 472). Final Proof. V. 12, pp. 117, 126, 287
March 3, 1879 (20 Stat. 472). Additional Homestead Regulations . V. 12, pp. 104, 183
January 22, 1880 (21 Stat. 61). Mining Act. V. 12, p. 215
May 14, 1880 (21 Stat., 140). Register's Fee. V. 12, p. 2
May 14, 1880 (21 Stat. 140). Contests. V. 12, p. 37
May 14, 1880 (21 Stat. 140). Relief of Settlers. V. 12, pp. 83, 115, 133
May 14, 1880 (21 Stat. 140). Preference Right of Entry. V. 12, pp. 134, 155, 170, 203, 239, 313
May 27, 1880 (21 Stat. 142). Virginia Military Lands . . . . . V. 12, pp. 24, 25
May 28, 1880 (21 Stat. 143). Osage Lands. V. 12, pp. 23, 80, 315
June 9, 1880 (21 Stat. 169). Settlers' Affidavits. V. 12, p. 51
June 9, 1880 (21 Stat. 169). Amending Sections 2262 and 2301 of R. S. . . V. 12, p. 222
June 15, 1880 (21 Stat. 236 and 237). Relating to Public Lands . V. 12, pp. 4, 6, 68, 131, 138, 139, 186, 205
June 16, 1880 (21 Stat. 287). Repayment of Purchase Money . . V. 12, pp. 52, 54, 58, 59, 62, 269
January 18, 1881 (21 Stat. 315). Winnebago Indians . . . . . V. 12, p. 228
March 3, 1881 (21 Stat. 505). Mining. V. 12, pp. 167, 216
March 3, 1881 (21 Stat. 511). Extension of Time . . . . . V. 12, pp. 37, 276
August 7, 1882 (22 Stat. 327). Deposits for Surveys . . . . . V. 12, p. 124
March 3, 1883 (22 Stat. 487). Alabama Mineral Lands . . . . . V. 12, p, 287
May 1, 1884 (23 Stat. 17). Surveys. V. 12. p. 45
May 17, 1884 (23 Stat. 24). Territory of Alaska. V. 12, p. 158
July 4, 1884 (23 Stat. 99). Attorneys. V. 12, p. 238
July 4, 1884 (23 Stat. 186). Indian Homesteads. V. 12, p. 299
July 5, 1884 (23 Stat. 58). Postage on Official Mail . . . . . V. 12, p. 310
July 5, 1884 (23 Stat. 103). Military Reservations . . . . . V. 12, pp. 90, 91
January 31, 1885 (23 Stat. 296). Forfeited Oregon Railroad Lands . V. 12, pp. 184, 220, 232, 234, 283, 284
February 25, 1885 (23 Stat, 321). Public Lands. V. 12, p. 162
February 28, 1885 (23 Stat. 237). Forfeited Railroad Grant . . . . . V. 12, pp. 149, 258
March 3, 1885 (23 Stat. 499). Appropriation for Surveys . . . . . V. 12 p. 245
March 3, 1885 (23 Stat. 674). Relief of Francis B. Van Haesen . . . . . V. 12, p. 15
March 3, 1885 (23 Stat. 677). Relief of Settlers on Duck Valley Reservation. V. 12, p. 15
March 3, 1885 (23 Stat. 690). Relief of Joseph F. Wilson . . . . . V. 12, p. 15

LAWS, INSTRUCTIONS, RULINGS AND DECISIONS.

Abandonment.
Contest, 6, 18, 50; Desert, 9; Homestead, 28, 63; Mines, 25, 26, 27; Pre-emption, 30; Railroads, 23.

Account.
It lies within the discretion of the Commissioner of the General Land Office to adopt such methods in the examination of accounts as may seem to him best calculated to ascertain the justness and accuracy of the same, and his action in such matter is not subject to appeal, though it will be reviewed on certiorari for due cause shown . . . V. 12, p. 244
Certiorari, 8.

Acts of Congress.—*See Acts of Congress Cited and Construed. Also Laws.*

Additional Entry.
Homestead, 58, 69, 70.

Adjoining Farm Entry.
Homestead, 2, 3.

Administrator.
Final proof, 4.

Adverse Claim.
Appeal, 13; Contest, 55; Desert, 12; Homestead, 35; Indian, 1; Mines, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 33, 43; Pre-emption, 5, 42, 44; Timber Lands, 3, 4.

Affidavit.
1. The large number of defective, irregular and insufficient proofs presented in public land cases, and the looseness with which attesting officers, particularly others than Registers and Receivers, have exercised their functions, make it necessary to issue these instructions . . . . . V. 12, p. 262

2. The validity of an affidavit accompanying an application to enter may not be considered for the first time on appeal, or upon the motion of a stranger to the record.
V. 12, p. 118

3. When affidavits, like those under consideration, are presented, showing the oath to have been taken before an officer qualified to administer the same, the Land Department should not inquire into the authority by which such officer exercises the rights of the office as a preliminary necessary to be settled before accepting such affidavits . V. 12, p. 66
Application to Enter, 1, 2; Contest, 9, 12 to 18, 24, 33, 34, 48; Desert, 2; Final Proof, 1; Homestead, 41, 64; Pre-emption, 28; Review, 2, 4; Timber Culture, 5, 7, 14, 31, 34; Timber Lands, 1.

Agent.—*See Attorney, Special Agent.*
Homestead, 42.

Agricultural Lands.
Contest, 10; Desert, 1; Indian, 4; Mines, 1, 8, 9; Pre-emption, 11; Timber Lands, 2.

Alabama.
Mines, 1.

Alaska.
Mines, 41.

Alien.—*See Naturalization.*

Amendment.
The official regulations direct how and what is necessary to be done to secure the amendment of an erroneous entry or filing. It nowhere authorizes the Register and Receiver to amend in either case without first being authorized so to do by this Department.
V. 12, p 18
Contest 14, 53; Mines, 12; Pre-emption, 5; Timber Culture, 8, 9.

Appeal.
1. Circular relative to appeals. V. 12, p. 262

2. An application for review or rehearing does not admit the correctness of the decision, nor cut off the right of appeal. A motion for a re hearing in a case pending before the local office should be promptly passed upon by the district officers. The time between the filing of a motion for a re-hearing or review and the notice of the decision thereon, is excluded in computing the time allowed for appeal. After an appeal has been taken, a motion for review will not lie . . V. 12, p. 85

3. The decision and papers in a case should be retained in the local office for a period of thirty days following notice of such decision.
V. 12, p. 239

4. Non compliance with one rule of practice by the local officers excuses non-compliance with another rule by a party to the contest . . . . . V. 12, p. 159

5. Where a party fails to appeal in time from an erroneous ruling of the local officers, and adverse rights intervene, he cannot thereafter secure the reinstatement of his claim.
V. 12, p. 202

6. The Department will not take action upon an appeal from an interlocutory decision . . . . . V. 12, p. 207

7. If no appeal is taken, a decision, even if erroneous, becomes final . . . . V. 12, p. 84

8. As the notice from the General Land Office informing the entryman of the adverse decision erroneously allowed but sixty days from the *date* thereof for appeal, and such notice was not received until after said sixty days had expired, said decision never became final, and the case was therefore properly reinstated . . . . . V. 12, p. 292

9. The Commissioner of the General Land Office has jurisdiction, by virtue of his supervisory authority, to examine the record in a case in which no appeal was taken from the

decision of the local officers, and, if the law has been misconstrued by them, to reverse their decision . . . . . V. 12, p. 4

10. It is not competent for the General Land Office to rescind an order allowing a party to appeal to the Secretary of the Interior . . . . . V. 12, p. 34

11. The appellant is estopped by his appeal from denying the jurisdiction of the Department to pass upon the whole record. V. 12, p. 214

12. Failure to appeal in time from the decision of the local office, does not necessarily cut off the right to appeal from the Commissioner's decision . . . . . V. 12, p. 229

13. If the local office improperly rejects an application to enter, the remedy is by appeal, and the applicant will not thereafter, in the absence of appeal, be allowed to set up such action of the local office to defeat an intervening adverse claim . . . . . V. 12, p. 114

14. It is immaterial that on the original decision, the applicant herein had an appeal pending which was not considered, for said appeal could not in any event have resulted favorably to him . . . . . V. 12, p. 225

Accounts, Attorney, 9; Certiorari, Contest, 8, 27, 30; Affidavit, 2; Homestead, 50; Railroad, 75, 77; Review, 5; Swamp, 11.

Application to Enter.

1. The application to enter filed prior to the ordering of a hearing and intervention of a third party's right should be considered as filed with the affidavit of contest. V. 12, p. 35

2. An application not accompanied by an affidavit showing applicant's qualifications to make entry will not be held defective if objection is not made at the proper time. V. 12, p. 49

3. On the presentation of an application for public land, the local office, in the event of not accepting the same, should duly indorse upon such application the reason for such action, and note upon the record a memorandum of the transaction . . . V. 12, p. 285

Affidavit, 2; Appeal, 13; Final Proof, 1; Mines, 26, 27, 32; Relinquishment, 5.

Arkansas.

Swamp, 3.

Assignment.

Desert, 10.

Attorney.

1. Local land officers are not embraced by section 190, R. S. . . . . V. 12, p. 238

2. The term attorney, as used in the rules of practice, is not restricted in its application to attorneys at law. Attorneys in fact, or those not generally licensed by a Court of Record to appear for parties in a representative capacity, will be recognized upon showing a duly executed authority from the constituent . . . . . V. 12, p. 238

3. No officer, employé or clerk whose appointment is subsequent in date to the 1st day of June, 1872, and who has not been out of office two years or more, is permitted to appear as attorney in the prosecution of any claim against the *United States* which was pending while he was in office. V. 12, pp. 177

4. That no person who has been an officer, clerk or employee of Interior Department within two years prior to his application to appear in any case pending therein, shall be recognized or permitted to appear as an attorney . . . . . V. 12, p. 238

5. Definition of terms "Case" and "Pending in the Department." . . . V. 12, p. 262

6. The status of attorneys before the Department under the provisions of Section 190 of the Revised Statutes. . . . V. 12, p. 201

7. The laws of Dakota do not forbid an attorney to administer the necessary oath to his client in a contest affidavit . V. 12, p. 190

8. Under section 5498 of the Revised Statutes a person holding the appointment of United States Commissioner will not be admitted to practice as an attorney or agent before the Departments . . . . . V. 12, p. 189

9. The formal withdrawal of an appeal or contest by the proper attorney of record is conclusive, and rights lost thereby cannot be restored by an attempted revocation of such withdrawal, after the intervention of an adverse claim . . . . . V. 12, p. 249

10. A party who asks reconsideration of a decision on the ground that he had no notice of the pendency of the case before the Interior Department, will not, under the circumstances recited herein, defeat jurisdiction acquired by notice to his recognized attorneys. V. 12, p. 129

11. A decision rendered becomes final upon notice to the party. To that date all motions, petitions, and communications of whatever kind refer, whether of citation or a basis for further action. A party is notified when his attorney is notified . . V. 12, p. 116

12. Attorneys appearing for alleged fraudulent entrymen will be required to file the written authority of the claimant for such appearance . . . . . V. 12, p. 141

Contest, 44; Homestead, 45; Notice, 6; Pre-emption, 55; Railroad, 76; Scrip, 8, 9; Timber Culture, 23.

Babb, J. H.

Act for relief of . . . . . V. 12, p. 15

Beaubien and Miranda Grant.

Discussion of the . . . . V. 12, p. 99

Board of Equitable Adjudication.

The Board of Equitable Adjudication cannot confirm fraudulent entries, nor title to assignees of homestead and pre-emption rights, the transfer of such claims prior to patent having been rendered null and void by statutory provisions . . . . . V. 12, p. 227

Homestead, 42, 54; Private Entry, 2.

Boyle, Henry.

Act for relief of . . . . . V. 12, p. 15

Breaking.—*See Timber Culture.*

Homestead, 38, 39.

Business.

Homestead, 1, 25, 29; Pre-emption, 31.

California.

School Lands, Surveys, 9, 11; Swamp, 4 to 8.

Cash Entry.

The prior pending claim having been rejected, the entry herein, allowed before the

record was thus cleared, is permitted to remain intact . . . . . V. 12, p. 295

Certiorari.

1. In view of the statements as to the intention to appeal, the record in this case must be certified under Rule of Practice 83. V. 12, p. 18

2. Certiorari is not a writ of right, but an application addressed to the sound judicial discretion of the Department, and may not be invoked for the purpose of reviewing decisions that have become final through failure to appear. In this case, as it appears that the entry was improperly canceled, and that without the entryman having been heard, a hearing is directed. . . . . V. 12, p. 130

3. From the adverse decision of the local office the pre-emptor took no appeal, relying on his alleged right under Rule 81 of Practice to appeal from the Commissioner's decision, if that should also prove unfavorable. The Commissioner held, however, that the right to appeal from his decision was lost through failure to appeal below. On application for certiorari the department denied the writ, as from the record presented the case appeared to have been properly disposed of under Rule 47. . . . . Vol. 12, p. 286

4, The proceeding by certiorari is provided to cover cases where the Commissioner formally decides against the right of appeal, and application therefor having been duly filed, should be forwarded, and all action in the case suspended under Rule 114 V. 12, p. 274

5. Certiorari will not lie to review proceedings where from the application it is apparent that substantial justice has been done. V. 12, p. 179

6. Where an entry was canceled without notice, and appeal denied because not filed in time, such proceeding will be reviewed on certiorari . . . . . V. 12, p. 178

7. Where it appears that the local office did not transmit the evidence filed by applicant, and appeal was denied, the proceedings will be reviewed on certiorari . V. 12, p. 179

8. The writ was denied, where it appeared that the adjustment of an account for services as deputy surveyor had been suspended, pending an examination of the work in the field . . . . . V. 12, p. 244

Accounts, Appeal, Homestead, 50; Review, 5.

Circular Instructions.

DESERT LANDS.

July 22, 1885. Meaning of . V. 12, p. 149
January 16, 1886. Final proof. V. 12, p. 294

HOMESTEADS.

March 16, 1885. Soldiers' additional homestead certificates . . . . . V. 12, p. 2
June 4, 1885. Indian homesteads. V. 12, p. 228

MINES AND MINERALS.

July 30, 1885. Mineral applications. School lands. Order of suspension. V. 12, p. 191

MISCELLANEOUS.

July 2, 1881. Disposal of proceeds of sales . . . . . V. 12, p. 23
July 15, 1882. Cienguilla grant. V. 12, p. 61
July 29, 1882. Thomas Harlan, relative to telegraph company, and timber trespass. V. 12, p. 60
October 24, 1882. Pawnee Indian lands. V. 12, p. 8
November 4, 1882. Sioux half-breed scrip. V. 12. p. 63
March 9, 1883. Certificates of deposit. V. 12, p. 62
May 24, 1884. Public records. V. 12, p. 177
February 27, 1885. Winnebago and Crow Creek reservations, Dakota . . . V. 12, p. 47
April 23, 1885. Removal of land office. V. 12, p. 48
May 8, 1885. Santee Sioux Indian reservation . . . . . V. 12, p. 90
May 27, 1885. As to special agents weekly reports . . . . . V. 12, p. 231
May 28, 1885. Noting on certain affidavits. V. 12, p. 90
June 23, 1885. Instructions to special agents . . . . . V. 12, p. 126
June 24, 1885. Deposit surveys. V. 12, p. 124
July 1, 1885. Timber trespass. V. 12, p. 128
July 9, 1885. California indemnity, school selection . . . . . V. 12, 139
July 23, 1885. Indemnity school selection. V. 12, p. 175
October 21, 1885. Filing of plat of survey . . . . . V. 12, p. 244

PRACTICE.

May 24, 1882. Moneys paid to local officers . . . . . V. 12, p. 2
April 7, 1884. Final proof . V. 12, p. 51
January 30, 1885. Amendment of entries. V. 12, p. 18
March 19, 1885. Motions at hearings should be in writing . . . . . V. 12, p. 2
March 30, 1885. Clerk of court, final proof . . . . . V. 12, p. 18
April 3, 1885. Suspension of entries. V. 12, p. 18
April 8, 1885. Hearings upon special agents' report . . . . . V. 12, pp. 117, 190
April 13, 1885. Order as to special cases. V. 12, p. 34
April 17, 1885. Contests, relinquishments. V. 12, p. 34
April 17, 1885. Citizenship . V. 12, p. 35
April 21, 1885. Publication of notices. V. 12, p. 34
May 8, 1885. Pueblo lands of San Francisco. V. 12, p. 162
May 11, 1885. Mines and minerals. V. 12, p. 51
June 4, 1885. Final proof . V. 12, p. 117
June 14, 1885. New rule of practice 115. V. 12, p. 98
June 15, 1885. Affidavit, notary public. V. 12, p. 121
June 16, 1885. Constructive compliance with law . . . . . V. 12, p. 117

June 24, 1885. Affidavits, applications, etc. V. 12, p. 117
June 26, 1885. Fees and commissions. V. 12, p. 117
June 30, 1885. Proof in pre-emption and commuted homestead entries . V. 12, p. 117
July 31, 1885. Hearings, notice, attorneys. V. 12, p. 141
September 1, 1885. Revised rules of practice . . . . . V. 12, p. 153
September 7, 1885. Indian homesteads in Michigan . . . . . V. 12, p. 169
September 17, 1885. Attorneys, Section 190, R. S. . . . . V. 12, p. 177
September 18, 1885. Relative to hearings. V. 12, p. 178
October 21, 1885. Ex-officers. V. 12, p. 238
October 26, 1885. Amended rule of practice No. 70 . . . . . V. 12, p. 213
October 30, 1885. Register's certificate on daily cash books . . . . . V. 12, p. 262
November 19, 1885. Local land officers not embraced by Section 190, R. S. V. 12, p. 238
November 23, 1885. Definitions of "Case" and "Pending in the Department." V. 12, p. 262
December 3, 1885. Modification of order of April 3, 1885 . . . . . V. 12, p. 225
December 4, 1885. Attorneys. V. 12, p. 238
December 8, 1885. Rule 81 of Practice. V. 12, p. 238
December 15, 1885. Relative to applications, affidavits and proof . . . V. 12, p. 262
December 18, 1885. Relative to appeals. V. 12, p. 262
January 6, 1886. Attorneys and visitors. V. 12, p. 261
January 11, 1886. Amendment of Rule of Practice No. 108 . . . . . V. 12, p. 261
February 24, 1886. Endorsement of official envelopes . . . . . V. 12, p. 310
February 25, 1886. Hearings near lands in dispute . . . . . V. 12, p. 297
March 2, 1886. Relative to keeping of dockets. . . . . V. 12, p. 310

RAILROADS.

August 29, 1885. Right of way railroads. V. 12, p. 184

TIMBER LANDS.

December 15, 1885. Protection of timber. V. 12, p. 270
January 2, 1886. Burned and scorched timber . . . . . V. 12, p. 270

Citizenship.

Claimants must swear specifically whether they are native born or naturalized citizens, or have made declaration of intention relative to citizenship. When not "native *born*" they will be required to furnish record evidence, as provided in instruction previously issued, that they have complied with the law relating to citizenship . . . . . V. 12, p. 35.

Indian, 2; Naturalization, Timber Culture, 7.

Clerk.

Attorney, Homestead, 5.

Clerk of Court.

Final Proof, 2, 3.

Coal Lands.

Mines, 1, 42.

Colorado.

Indian, 4; Military, 4; Naturalization, 4.

Commissions.

Fees, Repayment,

Commutation.

Homestead, 16, 45 to 55, 56; Pre-emption, 45.

Contest.

1. Instructions as to hearings held in towns where local offices are located . V. 12, p. 178

2. Instructions as to hearings near lands in dispute . . . . . V. 12, p. 297

3. How the docket of contested cases should be kept by the local officers. V. 12, p. 310

4. In view of the irregularities in the proceedings and alleged bad faith on the part of the settlers, a hearing is ordered. V. 12, p. 137

5. Claimants should have full opportunity and time to show the entire facts in their behalf. . . . . V. 12, p. 84

6. The right to contest an abandoned homestead entry does not rest upon the contestant's qualifications to enter the land, but may be exercised by any one . V. 12, p. 251

7. The right to contest an entry is held to lie with one who has been allowed, through inadvertency of the Government officers, to make and hold for five years a homestead entry in conflict therewith . . . V, 12, p. 273

8. The practice of ordering hearings, as a matter of course and without application, in cases of entries held for cancellation on Special Agents' reports, is discontinued. Hereafter, when an entry is so held for cancellation, the claimant will be allowed sixty days after due notice in which to appeal to the Secretary of the Interior, or to show cause why the entry should be sustained . . . . . V. 12, p. 141

9. Application for hearing must be accompanied by the sworn statement of claimant, setting forth specifically the grounds of his defense and what he expects to prove at such hearing. He must also make oath that his application is made in good faith and not for the purpose of delay . . . V. 12, p. 141

10. It is within the discretion of the Commissioner to order a hearing to ascertain the character of the land, and whether the conditions of the law have been complied with, though the applicant for patent may have obtained a favorable judgment in the courts as against an adverse claimant . . V. 12, p. 274

11. At any time while a contest is pending in a local office an entryman has the right to make proof. In a case of that kind, however, a certificate and receipt should not be issued, but the proof should be transmitted to this office with the papers in the case. V. 12, p. 19

12. The jurat to contest affidavit must be dated. Such affidavit, when a timber culture entry is involved, must aver that the alleged default continued to exist up to the date of the affidavit. Without such averment the affidavit is insufficient if objection is made in

time. The charges must be specific. "Wholly abandoned" is not a specific charge.
V. 12, p. 141

13. A contest affidavit is in the nature of an information, and the party making the same need not necessarily do so on his own personal knowledge and observation of the facts therein stated, but may base his assertions upon information and belief . . V. 12, p. 49

14. Before submitting testimony, Drake was allowed to amend his affidavit of contest. No testimony was offered on behalf of Schupp, and no appeal was taken from the decision against him . . . . . V. 12, p. 35

15. Had the claimant so chosen, he could have availed himself of the defect in the affidavit of contest, and secured the dismissal of contest . . . . . V. 12, p. 5

16. Where an affidavit of contest apparently was filed during the pendency of a prior contest, the actual date of filing may be shown by competent testimony, and the apparent irregularity may not be taken advantage of by a stranger to the record . . . . . V. 12, p. 88

17. An *ex parte* affidavit presented by a stranger is no ground for a re-hearing, especially as it contains matter that apparently could have been offered at the hearing. A bargain between parties for the withdrawal of a contest is of no concern to the government. Whatever damage resulted from the non-fulfillment of the contract is a matter for the local courts . . . . . V. 12, p. 36

18. Affidavit of contest was filed Oct. 21, 1882, alleging abandonment. Notice issued January 26, 1883, and served March 19, 1883. Contestant at latter date asked extension for thirty days, but did not file affidavit of continued abandonment of the land. Several irregularities are shown. As claimant returned and commenced to build a house January 5, 1885, the contest is dismissed.
V. 12, p. 34

19. Applications to contest received by early mail have preference over applications presented in person at the opening of the local land office . . . . . V. 12, p. 157

20. The right of precedence in the case of two applications to contest, should be awarded to the one first actually received. Rules adopted for the reception of applications on the filing of new plats are not to be followed except under similar circumstances.
V. 12, p. 297

21. In view of error in names, sixty days are allowed in which the parties may show cause why their entries should not be canceled . . . . . V. 12, p. 285

22. When an entry is under investigation by the General Land Office, an application to contest will be filed to await the result of such investigation. While the applicant will not control the proceedings he will, if successful, receive the preference right of entry.
V. 12, p. 238

23. A contest against a homestead entry based on want of residence, must be in conformity with section 2297 of the Revised Statutes.
V. 12, p. 115

24. Where notice of hearing has regularly issued on a defective affidavit of contest, it is improper to dismiss such contest without notice to the contestant, merely because a stranger in interest calls attention to the defects in the contest affidavits . . . . . V. 12, p. 271

25. Where a party holding the relinquishment of an entry commences contest against such entry for speculative purposes and fraudulently to hold the land from market until he should be prepared to enter the same, another party may commence contest to discover such relinquishment and compel its filing, and the cancellation of the entry will inure to the benefit of the second contestant. V. 12, p. 165

26. Where a pre-emptor dies, with contest pending against his claim, the Department will proceed upon the record and make its conclusion as if the original parties to the contest were still alive, without inquiry as to whether there are any heirs . V. 12, p. 87

27. While an appeal may be taken from the refusal of the Commissioner to order a hearing, his decision will not be disturbed except on substantial grounds of error.
V. 14, p. 214

28. While it is the better practice to not allow proceedings against a pre-emption claim, prior to offer to make final proof, yet the government may at any time exercise the right of instituting inquiry as to whether the claimant is complying with the law. In such cases objection to the jurisdiction of the local office should be made prior to a trial on the merits.
V. 12, p. 271

29. As the several notices failed to specify the correct names of the entrymen, they are allowed sixty days in which to show cause why their entries should not be cancelled.
V. 12, p. 309

30. It appears that the local office allowed the second contest to proceed pending the final determination of the first (on appeal). This was error . . . . . V. 12, p. 271

31. Two contests against the same entry at the same time cannot be recognized.
V. 12, p. 277

32. A contest will not be allowed during the pendency of another . . . . V. 12, p. 225

33. Where a third party desires to begin a contest against an entry already involved in a pending suit, the affidavit for such new contest should be received, but no action taken thereon until the pending case is determined.
V. 12, p. 114

34. Cowen's affidavit of contest should have been received and filed by the local officers—not allowing contest to proceed thereon, however, until final decision in the case of Sorrick against Felker . . . V. 12, p. 178

35. The Rules of Practice do not require that a motion to dismiss a contest, pending before the local office, should be in writing.
V. 12, p. 263

36. An agreement that the contestee's evidence should be taken before a stenographer, will not relieve the payment of the costs of taking such testimony . . . . . V. 12, p. 263

37. Where a contest is withdrawn by a cor-

testant, and a relinquishment of the contested entry is presented by him, together with the application of a stranger to enter the land, no notice should be given the contestant of a preference right . . . . . V. 12, p. 34

38. When a valid relinquishment of an entry under contest is presented, the entry should be canceled. Instructions as to contestant's rights . . . . . V. 12, p. 34

39. Motions at a hearing should be in writing . . . . . V. 12, p. 2

40. Where the contestant failed to appear at the hearing, and the contest was dismissed, he thereby lost all right to proceed therein, a subsequent contest having intervened. V. 12, p. 277

41. A motion for continuance will not be accepted unless a proper showing is made, and the contestant given an opportunity to admit what the absent witnesses would testify, if present. Such motion should be made prior to the entering upon the trial of the cause. V. 12, p. 84

42. In every contest the government is a party in interest, and will take care, so far as possible, that every applicant for public land shall show good faith in every act. In view of the charge and counter-charge of fraud, the doubt as to the correctness of the record, and the conflicting allegations as to the improvements, a further hearing is ordered. V. 12, p. 252

43. The inability of claimants to produce their witnesses is a matter of their own, and laches of this kind will not be excused by the Land Department . . . . . V. 12, p. 226

44. Where an attorney objects to questions as immaterial and irrelevant, his objections should be rated on the record. But when he instructs his witnesses not to answer, he transgresses the bounds of legitimate action. V. 12, p. 19

45. An applicant for land is entitled to the judgment of the General Land Office as to the validity of his claim, and to a consideration of the claim filed in support thereof. Vol. 12, p. 179

46. A case can not be continued by agreement of parties, but a continuance must be allowed by the Register and Receiver. In this case no continuance was asked for on the day of hearing, no testimony was offered, and the local office was properly justified in dismissing the contest of Woodward and entertaining the second contest . . . V. 12, p. 271

47. As the action taken was based upon an *ex parte* showing, without bringing the parties to issue before the local office, upon the questions of facts set up as a basis for adjudication, a hearing is ordered. . Vol. 12, p, 251

48. The statements contained in the affidavit of a party absent from a hearing cannot be considered . . . . . V. 12, p. 213

49. Local officers must consider only such evidence as is legally offered at hearings, and a government agent's statement made privately to them is not legal evidence .. V. 12, p. 213

50. Where suit is pending as to the right of entry and one of the parties thereto during the pendency of such suit charges the other with abandonment since the hearing therein, such charge will be heard on the termination of the pending case . . . . . V. 12, p. 204

51 A motion by the entryman to dismiss the prosecution on the ground of the insufficiency of the evidence having been sustained, obviated the submission of testimony on his part, and it was error to thereafter cancel his entry without allowing him opportunity to rebut the proof offered against him. V. 12, p. 250

52. Evidence showing want of cultivation is not admissible under a charge of "failure to plant." . . . . . V. 12, p. 267

53. Though an amendment of complaint. after judgment, to correspond with the proof, is denied, a new contest is allowed on the basis of the desired amendment. V. 12, p. 267

54. Orders for continuance should be properly noted of record . . . . . V. 12, p. 252

55. One who, with notice, fails to present his claim at the proper time will not be subsequently treated as an adverse claimant. V. 12, p. 252

56. Though a portion of the testimony is not properly authenticated it is under the circumstances entitled to consideration. V. 12, p. 252

Appeal, application to enter, 1; Attorney, 7, 9; Certiorari, 2; Fraud, 2; Holiday, Homestead, 39, 47, 62; Mines, 18; Practice, 12; Pre-emption, 38, 42, 43; Preference Right, Railroads, 51, 52, 78; Rehearing, 3; Relinquishment, 4; Special Agent, 1, 2, 3, 5; Swamp, 12; Timber Culture, 4, 26, 28 to 37, 40; Timber Lands, 1, 2, 4, 6.

Continuance.

Contest, 18, 41, 46, 54.

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Contest, 36; Fees, Final Proof, 4.

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Kansas Pacific Railway Company *vs.* Dunmeyer conveyance . . . . . V. 12, p. 9

Winona and St. Peter Railroad Company *vs.* Ashbel H. Barney *et al.*, Indemnity lands. V. 12, p. 12

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vs. E. H. Rose *et al.*, Conflict of mining claims. V. 12, p. 76

Geo. W. Frasher *et al. vs.* M. J. O'Conner, Contest for the possession of land. V. 12, p. 91

UNITED STATES CIRCUIT COURT.

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District of Kansas.

United States *vs.* Kansas City, Lawrence and Southern Kansas R. R. Co., To set aside the patents to a body of land in southern Kansas . . . . . V. 12, p. 186

District of Oregon.

Wiley C. Smith *vs.* William Ewing *et al.*, Suit to determine estate in real property and for injunction . . . . . V. 12, p. 104

Richard Koehler *vs.* L. T. Barin *et al.*, Suit for injunction . . . . . V. 12, p. 231

Court.

Fraud, 2; Mines, 16, 17, 19 to 26; Patent, 2 to 13; Railroad, 69; Trespass.

Cross-Examination.

Final proof, 1.

Cultivation.

Contest, 52; Homestead, 21, 22, 26, 33, 38, 47, 61, 67; Pre-emption, 32; School Lands, 7; Swamp, 7; Timber Culture, 27, 29, 30, 37.

Dakota.

Attorney, 7; Holiday, Indian, 9 to 12; Military, 3; Mines, 40; Surveys, 15; Timber Culture, 10.

Declaratory Statement.—*See Pre-emptions.*

Amendment, Final Proof, 7.

Deputy Surveyor.

Certiorari, 8; Surveys, 10.

Desert Lands.

1. Lands which naturally produce grass sufficient to make hay, are not desert lands within the meaning of the law. Lands that are partly agricultural and partly desert, cannot be entered under the desert act. The lands entered must be wholly of a desert character . . . . . V. 12, p. 149

2. The affidavit to which witnesses are required to make oath, cannot properly be made prior to the date of the declaration of the applicant. In all declarations for unsurveyed land, a diagram showing boundaries of entry must accompany same . . . . . V. 12, p. 315

3. A married woman and her husband cannot each make a desert land entry. V. 12, p. 314

4. A married woman is incompetent to make a desert land entry in her own name. V. 12, p. 314

5. Final proof in desert land entries may be made while the land involved is yet unsurveyed. Within ninety days after the filing of township plat in the local office, such entryman must adjust his claim to the public surveys, and make final proof with reference to the legal sub-divisions involved . . V. 12, p. 294

6. An entry covering the technical three-quarters of one section, is within the requirements of the law as to compactness. V. 12, p. 269

7. The compactness of tracts entered is to be settled by their side lines, which should not exceed in length one and one-fourth miles for six hundred and forty acres, one mile for tracts down to and including three hundred and twenty acres, and three-fourths of a mile for tracts of less area. Sub-divisions merely cornering one with another will not be regarded as compact . . . . . V. 12, p. 281

8. The failure of the parties to make the compliance with law which would have been required in case of legal entry, the voluntary *laches* leading to cancellation and the re-entry of such land in the same or different interests, does not change their status. V. 12, p. 242

9. Where parties voluntarily abandoned their entry on desert land for the alleged reason that it could not be reclaimed, there being no conflict, and the entry not erroneously allowed, the matter complained of originating in their own misjudgment, repayment will not be directed. . . . . V. 12, p. 59

10. Where several desert land entries were assigned to one person before final proof had been made thereon, such assignments were made in violation of law, and the cancellation of the entries made on a special agent's report will not be set aside, although the defendants were not notified of such action, and had no opportunity to be heard in defence of their claims. . . . . V. 12, p. 74

11. Positive testimony as to irrigation, improvements, and condition of land before original entry is required. . . . . V. 12, p. 259

12. In view of the obstacles encountered, and expense incurred, in procuring water for the reclamation of the land, final proof may be made in absence of an adverse claim, though the statutory period within which such proof should have been made has expired . . . . . V. 12, p. 281

13. In making final proof in desert land entries the best attainable evidence of the right to use of the water must be presented . . . . . V. 12, p. 315

14. The purpose of the desert land act is not to enable persons to acquire title to 640 acre tracts of the public land by mere formalities and constructive compliance with the law . . . . . V. 12, p. 150

Devisee.

Homestead, 44.

Devoid of Timber.

Timber culture, 12, 13, 14.

District.

The word district in this act and the act of June 9, 1880, refers to the judicial district, and not to the land district . . . V. 12, p. 51

Mines, 11.

Donation Claims.

1. The settlement not having been initiated within the time required by law, is invalid, and claim held for cancellation . V. 12, p. 61

2. Proof that claimant never made im-

provements, and had not attained the age to entitle him to donation, the claim having been invalid in its inception is held for cancellation . . . . . V. 12, p. 61

Double Minimum Lands.

Railroad, 31; School Lands, 4.

Duck Valley Indian Reservation.

Act for relief of settlers on. . V. 12, p. 15

Entry.

Amendment, Commutation, Practice, 11, 13; Special Agent, 5.

Evidence.—*See Testimony.*

Expenditures.

Mines 26, 27, 28, 29, 30.

Fees.

1. How made to the Receiver of public moneys. . . . . V. 12, p. 316

2. The fees prescribed by Section 2238 R. S., attach to the office and not to the officer. A Register or Receiver is not entitled to any of the fees received in the office during any part of the term of predecessor or successor. The term year, used in Section 2240, means a "fiscal," and not a "calendar" year. V. 12, p. 316

3. The circular of December 1, 1883, is modified by exempting all parties who apply to re-enter the same tracts and upon which the payments have previously been made, from making second payments of fees and commissions, and to allow them credit for the former payments . . . . . V. 12, p. 50

4. The practice of not collecting amounts less than one dollar must be discontinued, and where the proper excesses, or fee and commissions, are not collected, the entries will be suspended until the amount due is paid. V. 12, p. 117

Homestead, 43, 58; Railroads, 13, 35; Repayment.

Fencing.

Proclamation by the President. V. 12, p. 163

Filing.—*See Declaratory Statement.*

Final Proof.

1. Each question in final proofs must be orally asked and answered in the presence of the attesting officer. Applications, affidavits and final proof questions must be thoroughly explained, so that there can be no possibility that the parties will misunderstand the purport of their affidavits, or the full meaning of the questions asked, or the effect of their answers. Ready-made proofs presented merely for *pro forma* acknowledgment, without verification, cross-examinatlon, or evidence of identity, will not be considered such proofs as are required by law . . . . . V. 12, p. 262

2. Proceedings where a protest is filed against claimant making final proof before clerk of court. . . . . V. 12, p. 18

3. Notices of intention to make final proof should not state that the same will be taken before a clerk of a court. Such proof can be taken before a clerk only in the absence of the judge. When taken before the clerk, a proper certificate of the judge's absence must be attached. . . . . V. 12, p. 18

4. Duplicate copy of homestead and pre-emption proofs is not required, and charge therefor is illegal. . . . . V. 12, p. 51

5, Administrators, as such, cannot make final proof in any event . . . . V. 12, p. 202

6. In final proof, witnesses, when testifying, must state their residence to be in the particular section, township and range in which they actually reside: when residents of towns, the fact may be stated, but in no case will the simple statement of residence as being in a particular county be accepted. . V. 12, p. 264.

7. In final proof, notices need not be given to claimants whose filings have expired by limitation . . . . . V. 12, p. 117

Affidavit, 1; Contest, 11, 28; Desert, 5, 12, 13; Fraud, 2; Homestead, 7, 13, 17, 34, 37, 40, 41, 42, 43, 61, 64; Naturalization, 2; Notice, Pre-emption, 12, 42, 43, 45, 47, 48, 50, 52; Timber Culture, 41.

Forfeiture.

Homestead, 43; Railroads, 6, 7.

Forts.—*See Military.*

Fraud.

1. The Land Department will not knowingly permit itself to be made an instrument to further the fraudulent designs of an individual who is seeking to acquire title to land to which he has no right . . . . V. 12, p. 183

2. But fraud or imposition on those officers or a radical mistake by them of the law governing the disposition of the public lands, has always been held to be subject to remedy in a court of equity; and where there has been no contest, and the claimant produces without opposition his *ex parte* proof of performance of the necessary conditions, it is especially needful that equity should give the government a remedy if those proofs are founded in fraud and perjury. . . . . V. 12, p. 106

Attorney, 12; Board of Equitable Adjudication, Contest, 42; Homestead, 33, 34, 38, 50; Mines, 35; Patent, 3, 4, 7, 11; Practice, 8, 9; Pre-emption, 6, 22, 48, 49; Preference Right, 3; Repayment, 9; Special Agent, 5; Timber Culture, 34.

Guardian.

Homestead, 41; Pre-emption, 15.

Harris, Levi.

Act for relief of . . . . . V. 12, p. 15

Hearing. (*See Contest.*)

Heirs.

Contest, 26; Homestead, 44; Timber Culture, 10, 33.

Holiday.

According to the Civil Code of Dakota, "Whenever any act of secular nature other than a work of necessity or mercy is appointed by law or contract to be performed upon a particular day which falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed." V. 12, p. 66

Homesteads.

1. Land occupied for business purposes, and not for agriculture, cannot be entered under the provisions of the pre-emption and homestead laws . . . . . V. 12, p. 4

2. A party cannot make two homestead en-

tries. Where a party owns land acquired otherwise than under the homestead law, he may make what is known as an adjoining farm homestead entry . . . . V. 12, p. 120

3. As Thomas made a homestead entry October 10, 1877, upon other lands in said Section 19, you rejected his application for adjoining farm, for the reason that his homestead right was exhausted by his original entry . . . . . V. 12, p. 121

4. A homestead entry made for the sole purpose of obtaining the timber growing on the land will not protect the entryman in a suit for timber trespass thereon . V. 12, p. 86

5. A land office regulation cannot revoke a statutory right. A party who accepts employment in a local land office, temporarily waives his rights to enter public land, but he cannot waive the rights of other persons or relatives. In view of the facts presented in this case, the land office regulation is disregarded. V. 12, p. 157

6. A party on land as a tenant at date of sale of same and relinquishment of entry, and who agreed to become tenant for the purchaser and subsequent entryman, cannot claim the land as a settler from date of said relinquishment or otherwise . . . . V. 12, p. 71

7. The selling of land soon after making proof, coupled with slight residence and meagre improvements, is evidence of bad faith, and under such circumstances claims will not be allowed . . . . . V. 12, p. 265

8. Settlement upon land covered by a homestead entry confers no legal right so long as the entry remains uncanceled. V. 12, p. 214

9. Residence is established from the time the settler goes upon the land with the *bona fide* intention of making his home there, to the exclusion of one elewhere . V. 12, p. 298

10. To constitute residence there must be inhabitancy, either actual or constructive; and such inhabitancy must exist in good faith and be exercised to the exclusion of a home elsewhere. Residence is not established or maintained by occasional visits to the land. V. 12, p. 276

11. Claimants must strictly comply with the law in the matter of residence. V. 12, p. 119

12. No inflexible rule can be formulated as to what constitutes good faith in settlement and residence . . . . . V. 12, p. 54

13. Ambiguous testimony as to residence will not be accepted in final homestead proof. The dates of absences and causes of absence must be stated. Where claimant's family did not reside on the land, the reason therefor must be stated . . . . . V. 12, p. 217

14. Mere visits to the land to keep alive the fiction of residence do not constitute compliance with the law . . . . . V. 12, p. 271

15. The home contemplated by the homestead law is that of the family. The residence of the family must be accounted for where the family relations are maintained. V. 12, p. 85

16. In view of the meagre improvements, and the fact that entryman's family did not reside on the land, his commutation proof is rejected, and the original and commutation entries are held for cancellation .V. 12, p. 204

17. Occasional visits to a homestead by the entryman will not be considered residence, and in no way is it a compliance with the requirements of the homestead law, and final proof failing to show continuous residence for any period, or the establishment of a home on the land to the exclusion of any other, will be rejected . . . . . V. 12, p. 289

18. It is no valid objection to residence that it was maintained in the upper story of a building erected for purposes other than residence . . . . . V. 12, p. 214

19. In view of the facts presented, and that Jiran voted in a distant town, and in court proceedings stated his residence to be in such distant town, his homestead entry is canceled for non-compliance with law . . V. 12, p. 168

20. A homestead entryman, being appointed to a government office, is not excused because of such office from continuous residence on his land, even after establishing a *bona fide* residence thereon . . . . . V. 12, p. 227

21. Officials, like other homestead and preemption claimants, must reside upon their land, as well as improve and cultivate the same . . . . . V. 12, p. 312

22. Claimant's plea of attending to a lucrative business is not a satisfactory excuse for non-residence, and as his improvements and cultivation were too meagre to indicate good faith, his entry is held for cancellation. V. 12, p. 68

23. Failure of compliance with the homestead law is treated as abandonment of the claim. Occasional visits and staying a few nights on a tract do not constitute residence. The homestead law contemplates a home, not the acquisition of 160 acres of public land without living on it . . . . . V. 12, p. 86

24. Where a party lives upon a rented farm three or four miles distant from his homestead, he cannot perfect his homestead entry by placing valuable improvements on his land in view of his defective residence . V. 12, p. 181

25. The law was intended to give homes to *bona fide* seekers for such homes, willing to comply with the law, and any one who knows he is not in a condition to comply with the law, when he makes an entry is not exempt from a forfeiture on the ground of such inability, be it poverty, business, or otherwise. V. 12, p. 53

26. As the settlement, residence and cultivation of the homesteader were made with due notice of the *bona fide* claim and occupation of another, no rights were acquired thereby. . . . . V. 12, p. 275

27. A homestead claimant cannot maintain separate residences on public lands, under two separate and distinct laws, either of which exacts a single continuous residence, notwithstanding the exceptions made in his behalf by the statutes . . . . . V. 12. p. 54

28. It is not a sufficient excuse for abandonment that it was brought about through

the erroneous advice of neighbors, and rights so lost cannot be recovered by a return to the land. . . . . V. 12, p. 217

29. The evidence shows good faith on the defendant's part. Her absence was for the purpose of earning an honest livelihood. V. 12, p. 181

30. As the party has failed in the essential requirement of residence, his entry is held for cancellation. . . . . V. 12, p. 85

31. The residence of Laube is not satisfactory and his homestead entry is ordered canceled . . . . . V. 12, p. 191

32. In view of the evidence of poverty and good faith, the entry of Barrows is allowed to stand . . . . . V. 12, p. 172

33. The local officers will, at all times, where the improvements and cultivation do not justify the conclusion that a *bona fide* continuous residence has been maintained, use proper means to ascertain if the parties are acting in good faith, or attempting to get the land through fraud and in evasion of legal requirements. How continuous residence must be shown . . . . . V. 12, p. 227

34. The sale of his land by an entryman after final entry is not to be treated as evidence of fraud . . . . . V. 12, p. 172

35. The purchase of the improvements and possessory right of a homesteader confers no preference right of entry upon the purchaser as against a prior adverse settlement. V. 12, p. 204

36. Smith's improvements and inhabitancy of the land are sufficient to warrant the approval of his entry . . . . . V. 12, p. 87

37. The removal of improvements after making final proof is *prima facie* evidence of bad faith . . . . . V. 12, p. 87

38. Breaking land is not a satisfactory compliance with the homestead and pre-emption laws. Cultivation to crop or other farm products is essential. Removal from land after entry, in connection with other deficiencies, is evidence of fraud . . . . . V. 12, p. 192

39. As claimant is alleged to have made further inhabitancy, and largely improved the land since the hearing on which the Commissioner's decision was based, having broken for cultivation nearly fifty acres, the local officers will fix a day on which he will be allowed to furnish proof of such facts. . . . V. 12, p. 37

40. How final certificates should be made out where the widow of a deceased homestead entryman re-marries before final proof is made on the entry. . . . . V. 12, p. 144

41. If the minor becomes of age prior to the time of making final proof, the affidavit must be made by him . . . . . V. 12, p. 299

42. Where an ignorant homestead entryman, being deceived by his agent, fails to make final proof within the statutory period, he will not be regarded as concluded from proceedings to obtain title, although his entry may have been canceled under circular of December 20, 1873, provided notice thereunder failed to reach him. Where the law has been substantially complied with, and the error or informality arose from *ignorance*, accident or mistake, and is satisfactorily explained, the homestead entry may be confirmed. V. 12, p. 69

43. Final proof and payment having been made to the satisfaction of the local officers, and the entry admitted, a forfeiture thereof will not be declared except on conclusive evidence of bad faith on the part of the entryman . . . . . V. 12, p. 265

44. In case of death of both the homestead entryman and his wife, the patent shall go to *his* heirs or devisees. . . . V. 12, p. 53

45. A party who has completed a pre-emption entry may commute a homestead entry made thereafter. Such commutation is not a change to a pre-emption entry. V. 12, p. 312

46. The right of commutation depends upon a prior compliance with the homestead law. If the cash entry fail, the homestead entry fails therewith . . . . . V. 12, p. 265

47. The rule requiring evidence of six months' residence, prior to the allowance of commutation, is founded upon the regulations under the pre-emption law, and is followed to secure an assurance of good faith on the part of the entryman. Good faith being manifest from improvements and cultivation, a successful contestant, who made entry and proved six months' residence, was allowed to commute, though said period of residence began over a month prior to the cancellation of the contested entry. . . . . V. 12, p. 266

48. The condition coupled with the right to commute a homestead entry, "at any time before the expiration of the five years" renders residence a proper element of commutation proof. . . . . V. 12, p. 312

49. The commutation proof in this case is rejected because of defective residence. V. 12, p. 204

50. The cash entry held for cancellation for reason of insufficient proof, an entry having been made two months subsequent to proof, attorney asks extension of time for appeal, as claimant has changed her P. O. address; when appeal is presented, it is found that claimant resides in another State. The entry is adjudged fraudulent and appeal denied on account of not having been presented in time, attorney's action being considered frivolous; 20 days allowed for *certiorari*. . V. 12, p. 298

51. The proffer of commutation proof within the shortest possible period after entry, invites special scrutiny into the qualifications of the settler and his compliance with the law. V. 12, p. 289

52. Residence must be shown as an essential prerequisite to the right of commutation. V. 12, p. 289

53. The purchaser after commutation entry, and prior to patent, takes no better title than the entryman has to confer, and whatever right is thus acquired is subject to the subsequent action of the Land Department. V. 12, p. 289

54. An entry will not be sent to the Board of Equitable Adjudication where there is inexcusable failure to comply with the law. V. 12, p. 289

55. In view of the facts of record and the proof submitted, the homestead entry is held for cancellation. . . . . V. 12, p. 2

56. In view of facts stated, the commutation proof is held satisfactory . . V. 12. p. 182

57. Entries inadvertently allowed on land prior to final confirmation of private grant from which the land in question was excluded, reserve the land from other appropriation after the proper filing of the township plat until the cancellation of such entries. Settlements made during the existence of such entries are of no avail. . . . . V. 12, p. 168

58. You report a fee of one dollar charged on soldier's additional homestead entry, in addition to the lawful fee and commission reported. No authority exists for such additional fee. . . . . V. 12, p. 19

59. Where a soldier was discharged from the army for disability existing prior to his entry into service, he can be credited on his homestead entry only the actual time he served in the army. . . . . V. 12, p. 195

60. A soldier discharged prior to expiration of term of enlistment, to secure credit on his homestead entry for such term, must show that he was discharged for disability incurred in line of duty. A discharge for being under age is not sufficient . . . . . V. 12, p. 228

61. A party who has four years' military service cannot make proof one year from date of entry if he has only maintained an actual residence on the land during the six months preceding the date of proof. He must reside on and cultivate the land entered for a period of one year before making proof.
V. 12, p. 86

62. Until Dec. 15, 1882, soldiers were allowed six months after entry or twelve months after filing, in which to make settlement and improvements on their homesteads. A contest, invalid under a former practice, becomes valid when that practice is overruled. A contestee may set up as an equitable defense the prior practice. A stranger to the record cannot do so for the purpose of acquiring a claim to the tract . . . . . V. 12, p. 36

63. Proof that an entryman failed to settle upon and improve his homestead claim within six months after filing therefor, under Section 2304 of the Revised Statutes, will not sustain a general charge of abandonment.
V. 12, p. 118

64. The widow of a deceased soldier, who made a homestead entry as the head of a family, and did not state in her homestead affidavit that she was the widow of such soldier, can receive credit as to residence for her deceased husband's military services—provided, of course, he had not exhausted his homestead rights. It will only be necessary for her to establish the fact of her widowhood, and furnish a statement of her deceased husband's military services, at the time she submits final proof. The character of the original entry need not be changed.
V. 12, p. 168

65. If a soldier's widow remarries before making a homestead as such, she cannot thereafter when again a widow regain the rights she lost by her second marriage—such rights descend to the soldier's minor orphan children, irrespective of their mother.
V. 12, p. 36

66. Residence required of soldiers' widows and orphans . . . . . V. 12, p. 288

67. Where a party duly qualified to make a soldier's homestead initiates a claim, and dies before perfecting title to the land, having fulfilled the legal requirements to the date of his death, his widow can perfect title to the land, by keeping up the improvements, without residence; but if the widow herself initiates the entry after the decease of her husband, residence as well as cultivation is required . . . . . V. 12, p. 191

68. Where a soldier died after the expiration of his filing without having made an entry, the land may be entered by another party without reference to the claim of his widow. A woman who has lived with such soldier as his wife, though not his wife, may, under the circumstances recited in the case, after his death, make entry in her own name.
V. 12, p. 69

69. A soldier's additional homestead certificate of right for 80 acres, or one for 120 acres, may be located respectively upon two or three 40-acre tracts, anywhere in the same land district, and the tracts need not be contiguous, but must be embraced in one application and entered at one time. . . V. 12, p. 2

70. Where a party has made one additional homestead entry as a soldier, but has not entered 160 acres, he is not allowed to make a second additional homestead entry.
V. 12, p. 52

71. The proviso in the third section of the act of January 18, 1881, limits annuity payments to such of the Wisconsin Winnebagoes as bring themselves within its terms in the matter of entering or selecting land for a homestead . . . . . V. 12, p. 228

72. Indians or half-breeds cannot file claims under the pre-emption laws, and all homestead entries made by them must be made under Act of July 4, 1884. Ample opportunity for conserving the rights of Indians under the law will be allowed . . . . . V. 12, p. 299

73. Indian homesteads in Michigan.
V. 12, p. 169

Board, Contest, 6, 7; Mines, 15; Quarter Section, 2; Railroads, 24, 64, 65, 67; School Lands, 5.

Improvements.

Contest, 42; Homestead, 7, 16, 21, 22, 24, 33, 35, 36, 37, 39, 47, 67; Pre-emption, 28, 32, 34, 51; Scrip, 6; Timber Culture, 23.

Indemnity Lands.

Railroads, 15, 19, 36 to 47, 66; School Lands, 2, 4, 5, 6; Scrip, 4.

Indian Lands.

1. Lands occupied by Indians or set apart for such occupation are not subject to adverse entry, even if no formal or technical reservation is made of them. In this case there was a reservation, of which all men had notice . . . . . V. 12, p, 242

2. An Indian, born a member of an Indian tribe, which is recognized as a tribe by the Goverement, who has voluntarily separated himself from his tribe, and taken up his residence among the white citizens of the State, but who has not been naturalized, or taxed, or recognized as a citizen, is not a citizen of the United Stales, within the meaning of the first section the Fourteenth Article of Amendment of the Constitution . . . . . V. 12, p. 104

3. By the treaty setting apart the reservation, the lands were to be allotted and patented to one class in fee, and to the other with conditions as to the sale, etc., and until the character of the title is determined by the patent, the allottee can exercise no right of ownership over the land or timber thereon.

V. 12, p, 60

4. Colorado has no claim, under Act of September 4, 1841, to any of the proceeds of sales of public lands. Her claim to five per cent. of the net proceeds of sale of agricultural public lands heretofore embraced in Indian reservation will be recognized and paid. Under the enabling Act of March 3, 1875, Colorado is entitled to five per centum of the the net proceeds of sales of any but agricultural public lands made subsequent to her admission as a State, August 1, 1876.

V. 12, p. 305

5. Party failing to comply with the provisions of the act of July 5, 1876, relative to Kansas Trust and Diminished Reserve Lands is not entitled to repayment. . . V. 12, p. 58

6. An individual who has made a legal filing under the pre-emption laws cannot make a filing on Osage Trust and Diminished Reserved lands, nor can a filing on public land be allowed where the individual has made a valid filing on the Osage Trust land, unless in each case the settler was actually residing on the Indian land on the ninth day of May, 1872.

V. 12, p. 315

7. No purchase of the Pawnee Indian lands can be consummated until the required payment is made *in money*. The receipt of drafts not authorized . . . . . V. 12, p. 8

8. Under the treaty of September 30, 1854, a railway company can only secure, as an easement, the right of way through the Red Cliff Indian reservation . . . . V. 12, p. 231

9. Instructions as to the Santee Sioux Indian Reservation . . . . . V. 12, p. 90

10. Certificates of deposit on account of surveys cannot be received in payment for Sioux Indian lands. The act of March 3, 1863, requires such lands to be sold *for cash*.

V. 12, p. 8

11. Lands in Sioux Indian Reservation released from order of suspension. V. 12, p. 317

12. Proclamation as to the Winnebago and Crow Creek Reservations, Dakota.

V. 12, p. 47

13. As the land in question was at the date of entry part of an Indian Reservation, the act of June 15, 1880, does not apply. Where a party took patent for part of his land, he cannot thereafter be allowed to purchase the balance under this act . . . . V. 12, p. 205

Homestead, 71, 72, 73; Pre-emption, 4; Scrip, 5, 6, 7, 8, 9; Surveys, 15.

Kansas.

Indian, 5, 6; Mines, 15.

Land Warrants.—*See Scrip.*

Laws of Congress. (*in full*). . V. 12, p. 15.

Lode Claims.—*See Mines.*

Maine.

Ft. Sullivan in . . . . . V. 12, p. 90.

Maxwell Grant.

Discussion of the . . . . . V. 12, p. 99.

Mexican Grant.—*See Private Land Claims.*

Michigan.

Homestead, 73; Mines, 15; Private Entry, 4; Surveys, 12.

Military Bounty Land Warrant.—*See Scrip.*

Military Reservation.

1. This fort, though situated in the State of Maine, is held to be "public land," and subject to disposal under the act of July 5, 1884.

V. 12, p. 90

2. Occupation of part of the public domain by the military, as a military reserve, prevents legal appropriation thereof by pre-emptors, although the reserve may not have been formally declared by the President.

V. 12, p. 151

3. Fort Meade military reservation, Dakota.

V. 12, p. 244

4. Consideration of a tract within Fort Reynolds reservation, from which the applicant alleges the improvements have been removed . . . . . V. 12, p. 139.

Mines and Minerals.

1. On the cancellation of an entry existing at the date of the passage of the act of March 3, 1883, for land in Alabama theretofore classed as "coal," such land cannot be disposed of as agricultural until after public offering.

V. 12, p. 287

2. There is no relation of trust or confidence between mining partners, which is violated by the sale and assignment by one partner of his share in the company assets and business to one or more of his associates without the knowledge of the other associates.

V. 12, p. 109

3. The record in this case discloses no equitable reason why the defendants in error, who purchased the interest of third party in a mine in which all were jointly interested with the plaintiff in error, should be held bound to share with the plaintiff in error the interest so purchased . . . . . V. 12, p. 109

4. Departmental order of 24th of March last, directing the Commissioner "to suspend all action relative to mineral applications for school lands in the Territories until further instructions," was not intended to refer to claims initiated upon unsurveyed lands which may possibly by subsequent survey be found to lie in a school section, but was directed to a possible question as to whether or not mineral lands as such are exempt from the reservation of 16th and 36th sections for the support of schools . . . . . V. 12, p. 191

5. The effect of reservations for school purposes where sections sixteen and thirty-six

contain mineral will not be considered where the locations are made prior to survey. V. 12, p. 203

6. The cancellation of a mineral entry for non-compliance with antecedent statutory requirements does not affect the possessory rights of the applicant . . . . . V. 12, p. 61

7. Effect of relinquishment of defective entry and repayment of purchase money in such a case . . . . . V. 12, p. 51

8. Distinction between mineral and agricultural entries in this respect. . V. 12, p. 51

9. In view of the testimony presented, the land in question is held to be mineral in character . . . . . V. 12, p. 181

10. If a party goes upon the mineral lands of the United States, and works thereon, without complying with the requirements of any law, and relies exclusively on his possession, and a second party locates peaceably a mining claim covering the same ground, and in all respects complies with the requirements of the Federal and district mining laws, such second party is entitled to the mineral ground as against the party in prior possession, who is, from the time said second party has perfected his location, a transgressor . . V. 12, p. 188

11. Where a party commences proceedings for mining patent on unsurveyed land in a certain land office, under the erroneous belief that such claim is within that land district, he must, on discoverning his mistake, commence *de novo* before the proper land office . V 12, p. 158

12. Circular "N," of December 4, 1884, is hereby amended as follows: In entries made prior to the receipt by the Register and Receiver of said circular, the survey if free from objection under the former practice, need not be amended to conform to the provisions of paragraph 2 of said circular . . . V. 12, p. 51

13. Following the doctrine in Smelting Co. *vs.* Kemp and the Good Return Mining Company, an application for the survey of a claim embracing several contiguous lode locations is granted . . . . . V. 12, p. 288

14. The inclusion of a larger number of lineal feet than two hundred does not render a location, otherwise valid, totally void. This may occur, and often must occur, by accident of the surveyor, or other innocent mistake. V. 12, p. 76

15. No title from the United States to land known at the time of sale to be valuable for its minerals, can be obtained under the preemption or homestead or the town-site laws, or in any other way than as prescribed by the laws especially authorizing the sale of such lands, except in the States of Michigan, Wisconsin, Minnesota, Missouri and Kansas. V. 12, p. 245

16. A certificate of purchase of mineral land at the local land office, if no adverse claim is filed, and the entry is not disaffirmed by the Land Department, passes the right of the government, and, as against any other party, is equivalent to a patent. The land thereby ceases to be the subject of sale by the government, which thereafter holds the legal title in trust for the holder of the certificate. V. 12, p. 245

17. Several ways in which it can be shown that the adverse claim is waived, without invading the jurisdiction of the court while the case is still pending . . . . . V. 12, p. 78

18. Inaccuracies in surveys of mining claims may be investigated through the office of the Surveyor-General, not by a hearing. V. 12, p. 167

19. The land department may issue patent upon the filing of a waiver of an adverse claim in the office of the Register and Receiver, without first ascertaining that judicial proceedings have also been abandoned, and the suit properly dismissed in court. V. 12, p. 167

20. What constitutes the commencement of an action in a State court being matter of State law, the decision of that court on this point is not a federal question, and is not therefore, reviewable in the U. S. Supreme Court . . . . . V. 12, p. 77

21. Under the circumstances of this case, a conflicting survey is not an adverse claim. Where no adverse claim is filed during publication of notice, all matters that might then be adjudicated are considered as settled in favor of the applicant . . . . . V. 12, p. 143

22. On application for entry, proceedings were stayed by the intervention of an adverse claim, which was subsequently waived in the local office. The district officers, holding that such waiver did not remove the stay, refused to exercise jurisdiction. On appeal the Department reversed said decision. *Held*, That good practice requires the return of record to the local office for a decision on its merits. V. 12, p. 298

23. The intention of the mining law that suits begun by adverse claimants shall be directed to establishing the equitable right of possession between the parties, *and* the right to apply for a patent, the government is not estopped by the decision following the suit from inquiring into the validity or legality of the claim . . . . . V. 12, p. 166

24. Adverse claim having been filed, the full opportunity accorded for the settlement in court of the questions now urged by protestant who claims as the assignee of the adverse claimant, but disclaims for itself the position of adverse claimant, further objection resting on alleged prior and legal possession will not be entertained . . . . V. 12, p. 253

25. A voluntary dismissal of the suit instituted in the court by the adverse placer claimant, is held an abandonment of the ground in conflict, and a sufficient waiver of claim to the entire width applied for by the lode claimant, to authorize the issue of patent accordingly . . . . . V. 12, p. 264

26. When application is made for patent upon a mining claim embracing several locations, an adverse claimant may prove abandonment of any one of such locations by failure to make annual expenditure upon it, or upon a common claim for its benefit, and the possessory right will fail, even though the adverse claimant may not show in himself a good adverse claim by reason of a like failure. V. 12, p. 214

27. Applications for patent require the preliminary showing of compliance with the expenditure requirement of Section 2324, or resumption of work so as to prevent relocation for abandonment. . . . . V. 12, p. 215

28. The required expenditure of $500 need not be upon each original location, but upon the entire claim for which patent is asked. More than one lode claim may be embraced in one application for patent . . V. 12, p. 215

29. The certificate of the Surveyor General that $500 worth of labor has been expended, or improvements made upon the claim by the claimant or grantors must be filed before expiration of the sixty days of publication. V. 12, p. 130

30. Circular as to expenditure on mining claims . . . . . V. 12, p. 264

31. Instead of cancelling a mineral entry for insufficient proof, the claimant should be allowed opportunity to submit supplementary proof . . . . . V. 12, p. 180

32. An application for placer patent may embrace more than one location of one hundred and sixty acres . . . . . V. 12, p. 288

33. Where the boundaries of old placers are uncertain or unknown, such claims may be relocated by their owners for better description or other reason, subject to adverse claims. V. 12, p. 215

34. Though the parties evidently considered the timber of the most immediate value, it does not follow that they did not in good faith regard this as placer mining ground, and believe the water could be obtained at a reasonable expense . . . . . V. 12, p. 163

35. Courts should be slow in disturbing the title conveyed, and before they do, they should be clearly satisfied that the applicant has intentionally concealed material facts, or made false and fraudulent representations. Questions of doubt should be resolved in favor of applicant. . . . . V. 12, p. 163

36. Aside from any question as to the competency of the evidence, the clause reserving the rights of a townsite will not be inserted in a patent, as all the claims of discovery and location antedate the town settlement. V. 12, p. 264

37. Application for placer patent is rejected because it is an attempt to secure land valuable for townsite purposes and for the veins supposed to be therein . . V. 12, p 310

38. The officers of the Land Department have no authority to insert in a patent any other terms than those of conveyance, with recitals showing a compliance with the law and the conditions which it prescribes. The patent of a placer mining claim carries with it the title to the surface included within the lines of the mining location, as well as to the land beneath the surface . . . V. 12, p. 245

39. It would seem that there may be an entry of a town-site, even though within its limits mineral lands are found, the entry and the patent being inoperative as to all lands known at the time to be valuable for its minerals or discovered to be such before their occupation and improvements for residences or business under the town-site title. . . . V. 12, p. 245

40. There can be no color of title in an occupant of land, who does not hold under an instrument of proceeding or law purporting to transfer the title or to give the right of possession. Nor can good faith be affirmed of a party in holding adversely where he knows that he has no title, and that under the law, which he is presumed to know, he can acquire none. So held, where, in an action of ejectment for known mineral land by the holder of a patent of the United States, the occupant set up a claim to improvement made thereon under a statute of Dakota, which provides that "in an action for the recovery of real property, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title, adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a counter claim by such defendant," he not having taken any proceedings to acquire the title under laws of Congress authorizing the sale of such lands, or to acquire the right of possession under the local customs or rules of miners of the district . . . . . V. 12, p. 245

41. Mining regulations for the district of Alaska . . . . . V. 12, p. 158

42. In applications to purchase coal lands without having filed declaratory statement, no rights are acquired by virtue of alleged prior possession, as against adverse claimants who filed within the statutory period. V. 12, p. 203

43. Where a patent is sought not for a placer claim but for a water right such application will be denied. . . . . V. 12, p. 67

Contest, 10; Timber Culture, 16.

Minnesota.

Mines, 15.

Minor.

Homestead, 41, 60, 65, 66; Naturalization, 1; Pre emption, 15, 44.

Misnomer.

Contest, 21, 29; Notice, 4.

Missouri.

Mines, 15.

Naturalization.

1. To secure citizenship for a son, the father must be naturalized during the son's minority. Otherwise the son must proceed as any other alien is required to do. . . . V. 12, p. 271

2. Local officers are allowed to accept copy of naturalization paper in place of original, where final proof has been taken before an officer of a court of record, and where such officer certifies that, after comparison, the copy corresponds with the original. But in all other cases such copy must be certified by the Register and Receiver. . . . . V. 12, p. 222

3. Where an alien settled on a tract and left after some months' cultivation of the land for a distant state and there declared his intention of citizenship, such declaration is held to cure the defect in his settlement, and his right attached notwithstanding another party made entry of the land before such alien returned to it after such declaration in the distant state. Constructive residence is equivalent to settlement in such case. . V. 12, p. 98

4. The judges of County Court in Colorado may naturalize aliens . . . . V. 12, p. 222
Citizenship, Pre-emption, 4.

Navy.—*See Soldiers.*

Nebraska.
Indian, 7.

Newspaper.—*See Publication.*

Nolan Grant.
Consideration of the . . . . V. 12, p. 173

Notice.
1. Publication of notice, how made. V. 12, p. 34
2. Where a published notice incorrectly describes the land, giving wrong tracts, and omitting tracts sought to be proved up, the notice must be republished, correctly stating the desired lands . . . . . V. 12, p. 19
3. It must affirmatively appear that proper efforts had been made to obtain personal service before publication could be resorted to, and the acts relied upon must be stated. Posting copy of notice on the land is just as essential as its publication. Sending copy by registered mail to last known address is an essential part of notice by publication. V. 12, p. 141
4. Owing to error in name of entryman, the case is remanded. As this error was caused by the Register, he must pay the cost of new notice. . . . . V. 12, p. 18
5. A stranger to the record will not be heard to allege the want of due notice to the defendant. . . . . V. 12, p. 190
6. As the other parties were not directly interested in this order, no notice was given them or their attorneys. . . . . V. 12, p. 34
7. Final proof notices may be inserted in every other issue of newspapers published semi-weekly. . . . . V. 12, p. 287
8. Notice of hearing need not be published for a period of four weeks, five insertions, but simply once a week for four successive weeks . . . . . V. 12, p. 66
Appeal, 2, 3, 8; Attorney, 10, 11; Certiorari, 6; Contest, 18, 24, 29, 55; Desert, 10; Final Proof, 3, 7; Homestead, 42; Pre-emption, 26; Review, 1; Special Agent, 1, 3.

Ohio.
Decision relative to lands in the Virginia military district in Ohio . . . . V. 12, p. 23
Swamp, 9, 10.

Oregon.
Swamp, 11, 12.

Orphan.—*See Minor.*

Osage Lands.
Filing upon . . . . . V. 12, p. 315

Patent.
1. A legislative grant having been made of the land in controversy, and the United States having parted with its title thereto, the jurisdiction of the executive branch of the Government over the land has ceased as fully and completely as if a patent had been issued in the case . . . . . V. 12, p. 241
2. The presumption of the regularity of all proceedings prior to the issue of a patent for public lands, which is made against collateral attacks by third parties, does not exist in proceedings where the United States assail the patent for fraud in their officers in its issue, and seek its cancellation . . . . V. 12, p. 45
3. The United States do not guarantee the integrity of their officers, nor the validity of the acts of such, and are not bound by their misconduct or fraud. A land patent issued to a fictitious person conveys no title which can be transferred to a person subsequently purchasing in good faith from a supposed owner. V. 12, p. 45
4. The United States has the same remedy in a court of equity to set aside or annul a patent for land, on the ground of fraud in procuring its issue, which an individual would have in regard to his own deed procured under similar circumstances . . . V. 12, p. 106
5. The doctrine of the conclusiveness of judgments and decrees of courts, as between those who are parties to the litigation, is not applicable to the United States, in regard to the proceedings before the land officers in granting patents for the public land. V. 12, p. 106
6. Though it has been said very truly in some cases that the officers of the Land Department exercise functions in their nature judicial, this has reference to cases in which individuals have, as between each other, contested the right to a patent before those officers, whose decision as to the facts before them is held to be conclusive between those parties . . . . . V. 12, p. 106
7. The procuring of the issue of a patent at the Land Office by means of false documents which purport to show official proceedings and acts by subordinate officers which are fictitions, is a fraud upon the jurisdiction of the Land Office, and not a mere presentation of doubtful and disputed testimony. V. 12, p. 45
8. Where a bill in equity is filed by the United States to set aside a patent, a certification or other instrument whereby title to public land has been apparently conveyed, the court is not concluded by the construction placed by the ministerial officers of the government upon the acts of Congress, or the views taken by them as to the extent of their powers . . . . . V. 12, p. 186
9. In such an action, the instrument purporting to convey title must be first examined to determine what authority the ministerial officers assumed to exercise, and by virtue of what acts and statutes of Congress they attempted to transfer title. If those acts and statutes warranted no such transfer of title, then, while the defendant may defeat the action by proof that equitably though not legally he is entitled to the lands, he does not defeat it by proof that under some other statute he had equitably an unadjusted claim for at least an equal amount of unselected lands. V. 12, p. 186
10. To charge the holder of the legal title to land under a patent of the United States, as a trustee, it must appear that, by the law properly administered in the Land Department, the title should have been awarded to the latter: it is not sufficient to show that

there was error in adjudging the title to the patentee . . . . . V. 12, p. 78

11. The interests of strangers, purchasing stock in a corporation, having no actual notice, ought not to be affected by fraudulent acts affecting the title to land, held by the corporation, performed by parties organizing a corporation, many years before the purchase of stock, and prior to the creation of the corporation, even in a suit brought by the United States. Strangers purchasing stock, without actual notice of frauds affecting the title to lands held by corporations, ought to be entitled to rely on the decrees of the tribunals of the United States, affirming such titles. V. 12, p. 26

12. The practice of allowing one set of private parties, for their own purposes, upon indemnifying the United States against costs, to use the name of the United States for the purpose of litigating with other parties, considered and deprecated . . . . V. 12, p. 26

13. As the applicant herein may assert her right in the courts, and the Government has no interest in the land involved, the application for the institution of suit to set aside certain patents is denied. . . . . V. 12, p. 295

14. All patents for private claims sent to the local office for delivery, should be delivered to some party having an interest in the land patented . . . . . V. 12, p. 211

15. Persons claiming delivery of patents should be required to furnish unbroken chain of title, showing to whom the lands inure; and, if agents or representatives, to connect themselves with patents. . . . V. 12, p. 103

16. Patents should be delivered, 1st, to person to whom issued; 2d, to party obtaining under original grantee and showing right by unbroken chain of title; and 3d, to party presenting duly executed power of attorney from person entitled to delivery as above. V. 12, p. 103

Board, Homestead, 53; Indian, 3; Mines, 16, 19, 25, 38 to 40; Private Lands, 2, 3; Railroads, 58, 59; Repayment, 7; Scrip, 2.

Pawnee Lands.

How purchased . . . . . V. 12, p. 8

Poverty.

Homestead, 25, 32; Pre-emption, 52, 53.

Placer.

Mines, 32, 33, 34, 35, 37, 43.

Plat.

Contest, 20; Desert. 5; Homestead, 57; Pre-emption, 33; Private Entry, 3; Railroads, 30; Survey, 1.

Practice.

1. Order as to "special" cases. V. 12, p. 34

2. Order of April 3, 1885, as to suspension of entries . . . . . V. 12, p. 18

3. Modification of Order of April 3, 1885. V. 12, p. 225

4. This rule requires the transmission only of the papers filed in support of the motion or application . . . . . V. 12, p. 261

5. New Rule of Practice, No. 115. V. 12, p. 98

6. "Rule 70. Rules 43 and 48, inclusive, and Rule 93, are *not* applicable to appeals from decisions rejecting applications to enter public lands." . . . . . V. 12, p. 213

7. Rule 81 of Rules of Practice, approved August 13, 1885, is amended . V. 12, p. 238

8. Burden of proof in cases of alleged fraud shifted upon the defendants . . V. 12, p. 117

9. As this circular is contrary to all rules of evidence and court practice, it is ordered modified so that the burden of proof shall not be upon the defendant . . . . V. 12, p. 144

10. You also state that the case of Walsh *vs.* Braunesreuthen is identical with the case above described, "both involving the character of the land," and refers to an enclosed stipulation of both parties, that the last described case shall be governed and decided in the same manner as the first mentioned case. This manner of disposing of cases will not be permitted in the future. . . . V. 12, p. 271

11. An entry having been canceled, and change of entry authorized, but not perfected, a party showing a *bona fide* title to the land is entitled to have the canceled entry reinstated. V. 12, p. 51

12. Where a person, instead of awaiting the orderly decision of a case, goes upon land and improves it, he cannot claim a decision in his behalf, simply on the ground of equity. V. 12, p. 36

13. Blank forms of applications, affidavits, proofs, notices, etc., for the entry of lands under the public land laws, are furnished for the use only of claimants personally, and will not be supplied to attorneys, clerks of courts, notaries public, or other officers or persons. V. 12, p. 117

14. It being apparent upon the face of the record that mistake has occurred in the decision of a former head of the Department, and that it is impossible to execute said decision, the rule of *res judicata* will not prevent an examination and disposal of the case on its merits . . . . . V. 12, p. 191

15. A decision by the head of a Department will not be disturbed by his successor except under different facts, a change of law, or other exceptional or anomalous circumstances . . . . . V. 12, p. 116

16. Constructive compliance with law. V. 12, p. 117

17. Purchase under 2d Section of Act of June 15, 1880, may be made after cancellation of the entry involved, provided it does not interfere with a subsequent right. In this case such purchase is allowed notwithstanding an adverse settler with improvements valued at $800 is residing upon the land. V. 12, p. 131

Appeal, Certiorari, Contest.

Pre-emptions.

1. A pre-emptor will not be re-instated in his right on account of the illegality of his filing made through failure to make settlement prior thereto. . . . . V. 12, p. 121

2. Under the laws of Dakota, a deed from the husband to the wife is permissible, and a conveyance so made by the pre-emptor apparently in good faith prior to his filing, followed by a conveyance of record to a third party

before the inception of an adverse claim, removes any objection to the pre-emption claim under the second clause of Section 2660 R. S. . . . . V. 12, p. 290

3. After her alleged settlement and filing, and prior to entry, defendant married. She thereby forfeited her pre-emption right. V. 12, p. 145

4. There is no law that confers upon Indians the right to acquire public lands as pre-emptors, nor do the general statutes of naturalization apply to them . . . . . V. 12, p. 2

5. Failure to amend, in accordance with the application asking for such privilege and the order granting the same, until after the introduction of an adverse claim, defeats the right of amendment . . . . . V. 12, p. 313

6. In view of the fraudulent agreement and conspiracy entered into by the defendant, her pre-emption declaratory statement is canceled. V. 12, p. 20

7. In view of the facts recited, the entry in question is held to have been made in good faith, and not for the benefit of any person except the entryman. . . . . V. 12, p. 20

8. When a claim is located upon the ground before survey, either with Valentine scrip or under the pre emption laws, and other claims are afterwards made and located with reference thereto, the party first locating and making known the extent of his claim will not be permitted to enlarge the same to the injury of subsequent locators whose claims have been made to conform to such first location. V. 12, p. 3

9. The fact that the first filing was made prior to the adoption of the Revised Statutes will not avoid the inhibition of section 2261. V. 12, p. 254

10. Where a claimant has put his filing on land not properly subject thereto, and the same is canceled, such filing should not be held to exhaust the clainant's pre-emptive right . . . . . V. 12, pp. 8, 132

11. Second filing is allowed when first was made on land worthless for agricultural purposes, at a time when its character could not be ascertained, and relinquished with due diligence after discovery of its character. V. 12, p. 3

12. A restoration of the pre-emption right denied where the record showed the applicant to have made one filing under which, through his own fault, he failed to make final proof . . . . . V. 12, p. 192

13. The Department will not consider a petition for the restoration of the right to file for, or enter land, unless accompanied by application for some specific tract. V. 12, p. 273

14. The settlement of Ward as described was not a forcible intrusion but was a valid settlement . . . . . V. 12, p. 182

15. Where a deceased pre-emptor made a valid settlement on unsurveyed land, the guardian of the minor heir may file the declaratory statement, and make the required proof . . . . . V. 12, p. 182

16. Pre-emption is based on acts of settlement. These consist of some substantial and visible improvement of the land, having the character of permanency with intent to appropriate it under the law. But the mere intention to perform such acts at a future day is not a substitute for their actual performance, and the law will not recognize it as a foundation of a pre-emption claim . . V. 12, p. 205

17. The occupation of land by permission of the owner of the improvements under circumstances similar to the ones recited herein cannot give prior right as a settler. V. 12, p. 313

18. The settlement as described was not a legal one, so as to prevent entry by contestant. V. 12, p. 145

19. A party who settles upon land embraced, properly or otherwise, in a pre-emption entry, is a trespasser, and can gain no rights thereby . . . V. 12, p. 169

20. Trivial acts of alleged settlement, denoting, when anything, a mere intention to settle in the future, not followed up by residence and improvement, and use of the land, are not sufficient to hold land from appropriation by others who desire to enter it for the pose of really making a home upon it and deriving a support therefrom . . . V. 12, p. 70

21. A settler is one who attaches himself to the soil. A person who does not do this is not a settler within the meaning of the law or the common understanding of the term. V. 12, p. 70

22. A pre-emption claim based upon a settlement and filing made for the benefit of another is void *ab initio*, and not susceptible of validation by the rescission of the contract under which it was initiated . . . V. 12, p. 132

23. No legal claim can be founded by settlement upon land covered by the timber culture entry of another . . . . . V. 12, p. 277

24. As the circumstances of this case are declared exceptional, the land in dispute is awarded to the second or subsequent settler. V. 12, p. 159

25. Priority of settlement must be protected by some legal assertion thereof, to be of avail as against the subsequent settler. V. 12, p. 313

26. Under the pre-emption law the claimant, in order to sustain his settlement, must perform some substantial act of improvement on the land at the date of settlement, which, as notice, will sufficiently indicate to the world his or her positive intention to claim the land in pursuance of law, thereby putting a subsequent intending settler on his inquiry as to the facts . . . . . V. 12, p. 87

27. A party on the public land as a tenant cannot claim as a settler adversely against the claimant from whom he leased the land. V. 12, p. 271

28. Where a pre-emptor has cleared timber and erected a house, but has not broken or cultivated the land, his final entry should not be allowed, especially if the pre-emption affidavit was made before an officer of a different county from that in which the land is situated, and no explanation is given for such proceeding . . . . . V. 12, p. 144

29. Where a pre-emptor is elected to an

office in a distant town under a law requiring such officer to be an inhabitant of such town, he is estopped by accepting such office from claiming residence on his pre-emption claim. V. 12, p. 144

30. Before a person can quit or abandon a residence on his own land to reside on the public land, he must have a residence to abandon of the same character that the pre-emption law requires to be established. Where residence has once been abandoned it cannot be again acquired by a temporary abode at a place without the intention of remaining, or making the same a home . . . V. 12 p. 255

31. Good faith being apparent from the value of the improvements and acts of the pre-emptor, his temporary absences from the land are held to be excused by the exigencies of business, it appearing that he in fact made his home upon the land . . . V. 12, p. 120

32. In view of the extent and value of the improvements, the amount of cultivation, and the evidence of good faith, the pre-emptor's residence is held sufficient. . . V. 12, p. 146

33. Meagre observance of the requirements of the pre-emption law, pending a prolonged suspension of the township plat, held to be excused where good faith was shown in the maintenance of possession during such period, and compliance with the law after the plat was restored. . . . . V. 12, p. 300

34. An occasional visit to the land, and very scant improvements, do not show good faith on the part of the pre-emption claimant; and, as he did not establish a residence thereon prior to making proof, he has not complied with either the letter or spirit of the law . . . . . V. 12, p. 54

35. While the pre-emption laws require a residence both continuous and personal, yet a settler may be excused for temporary absences which do not impeach his good faith. V. 12, p. 170

36. Pre-emption laws require a residence both continuous and personal upon the tract, of the person who seeks to take advantage of them . . . . . V. 12, p. 78

37. The settler may be excused for temporary absences from the tract, caused by sickness, well-founded apprehensions of violence, and other like enumerated causes. . . V. 12, p. 78

38. The filing of a relinquishment accompanied by a pre-emption declaratory, defeats a simultaneous application to contest the entry thus vacated . . . . . V. 12, p. 297

39. All inchoate claims or mere pre-emption rights are extinguished by the reservation of the land embracing them . . . V. 12, p. 7

40. After the reservation, one who was before a settler in pursuance of law, is no longer entitled to the possession of land embraced therein, and by retaining possession becomes a trespasser . . . . . V. 12, pp. 7, 8

41. The mere fact that an individual now and then stays over night in a cabin on public land, while during all of this time he is herding stock for other persons in that vicinity, does not entitle him to pre-empt such land. V. 12, p. 205

42. A hearing in this case is refused, because the party had full knowledge of the pre-emptor's intention to make final proof. Although as a rule settlement is required before the filing on a pre-emption claim, yet if, in fact, it is made before the intervention of an adverse claim, the defect is cured. Martin's purchase under the act of June 15, 1880, is held invalid . . . . . V. 12, p. 4

43. Contests to clear the record of pre-emption filings are not encouraged by the Department. The rights of the pre-emptor should await consideration until final proof is offered. V. 12, p. 217

44. The pre-emptor has failed to show good faith, and having further prejudiced his case by entering into a negotiation for transfer of the land, is not entitled to further recognition in view of the adverse claim in the name of two minor orphan children of a deceased soldier . . . . . V. 12, p. 37

45. Relating to proof in support of pre-emption claims and commuted homestead entries . . . . . V. 12, p. 117

46. The land in dispute is not awarded to the prior settler, but as both parties settled before survey, the tract can be entered jointly. Should either party refuse, it is awarded to the other party . . . . . V. 12, 133

47. On the submission of final proof, local officers may require additional or explanatory evidence, subject to review for manifest error. V. 12, p. 254

48. A certificate of purchase issued in due form, in favor of a pre-emptor, for land subject to entry under the pre-emption law, cannot be canceled or set aside by the Land Department for alleged fraud in obtaining it; but in such case, the government must seek redress in the courts, where the matter may be heard and determined according to the law applicable to the rights of individuals in like circumstances. . . . . V. 12, p. 104

49. A purchaser in good faith and for a valuable consideration, from a pre-emptor, of the land included in the latter's certificate of purchase, takes the same purged of any fraud which might have been committed in obtaining said certificate . . . . . V. 12, p. 104

50. Where evidence submitted at a hearing clearly shows bad faith on the pre-emptor's part or illegality in the reception of his claim so that it cannot be perfected, his declaratory statement should be canceled. A pre-emptor once having offered final proof, may in some cases be allowed an opportunity to furnish additional proof within the time prescribed by law . . . . . V. 12, p. 3

51. Spink had no well—omitted to make usual improvements, and failed to show good faith in the premises. In view of the evidence his entry is ordered canceled . . V. 12, p. 70

52. Such proof will be rejected where payment is not tendered at time proof is made. Alleged poverty is no excuse under the circumstances recited . . . . . V. 12, p. 88

53. Poverty will not excuse total failure to comply with the requirements of the law. V. 12, p. 251

54. Where a decision incorrectly states an immaterial point in the evidence, such error is not sufficient ground for the reversal of the decision. . . . . V. 12, p. 160

55. Where the evidence is clearly against a party, the fact that he was not represented before the Secretary by a lawyer can have no weight in his behalf . . . . . V. 12, p. 160

56. Sickness in a pre-emptor's family is a plea that is always looked upon with indulgence; but it cannot be held as a sufficient excuse for non-residence, when nothing else in his conduct evidences good faith. V. 12, p. 160

Board, Contest, 26, 28; Homestead, 1, 27, 45, 72; Military, 2; Mines, 15; Railroads, 24, 63; Timber Culture, 4; Timber Lands, 6; Town-site, 14.

Preference Right.

1. A preference right of entry accorded the contestant rests entirely upon his success in the contest he has initiated, and that right may not be defeated by means of a relinquishment, dated prior to the contest, but filed during its pendency. . . . . V. 12, p. 118

2. The preference right of entry accorded the successful contestant under the act of May 14, 1880, is not affected by the want of the contestant's qualification to make such entry at the initiation of the contest . V. 12, p. 239

3. A qualified party is entitled to preference right of entry who secures the cancellation of a fraudulent entry, notwithstanding such contestant lost his pre-emption right as a result of the hearing and investigation in the case. V. 12, p. 133

4. The question of the right of a successful contestant to waive his preference right of entry, is one with which the government has no concern . . . . . V. 12, p. 115

Contest, 22, 25.

Private Entry.

1. The Act of January 31, 1885, did not restore any lands to private entry within the limits of the Oregon Central Railroad grant. V. 12, p. 283

2. Following the departmental ruling in the case of Pecard *vs.* Camans, the private entries herein are not held void, but voidable and subject to confirmation by the Board of Equitable Adjudication . . . . . V. 12, p. 307

3. The land applied for was marked on the plat in the local office with the number of a private entry, and though so marked probably through mistake, it was not thereafter subject to private entry until regularly restored by public notice . . . . . V. 12, p. 285

4. Michigan land cases . . . V. 12, p. 194

Private Lands.

1. The private grant in question was for specific quantity within large exterior boundaries specified, and confers upon the grantee a right to all the land within those boundaries until the specific portion is set off to him, as the tract in question was *subjudice*, or in a state of reservation, and was excepted from the railroad grant . . . . . V. 12, p. 22

2. A cash entry allowed in conflict with a private claim, confirmed before such entry but not surveyed until subsequently, could not properly go to patent, if such survey was not indispensable to the location of the private claim . . . . . V. 12, p. 269

3. No matter by what means obtained, a patent for a private land claim prevents further action by the United States as to allowing settlers on the land involved, until such patent is set aside by the proper judicial tribunal. V. 12, p. 162

4. Discussion of the Beaubien and Miranda or Maxwell Grant . . . . . V. 12, p. 99

5. Claimant has the same right as a homestead party to cut and remove timber for the purpose of improving the land; but no more right to do so for sale until his title is perfected . . . . . V. 12, p. 61

6. The land is in reservation, and railroads have no right to enter upon and take timber therefrom for purposes of construction. V. 12, p. 61

7. Consideration of the Nolan grant, New Mexico . . . . . V. 12, p. 173

8. Nolan was the owner of two grants: Congress confirmed one, with the condition that when the lands thus confirmed were patented, they should be taken in satisfaction of all "further claims or demands against the United States." The acceptance of such patent by Nolan's heirs, was in full satisfaction of any claim under the remaining grant, and the lands held in reservation therefor are accordingly restored to the public domain. V. 12, p. 282

9. The essential foundation of a recognizable claim under the laws of Spain, and the treaties and, laws of the United States, does not appear in this case . . . . . V. 12, p. 63

10. Public lands are not reserved upon hypothesis, or the mere assumption of a claim, however valid, void, or unrecognizable, but under the laws, and upon legally prescribed proceedings determinative of the nature, boundaries and extent of such claim. V. 12, p. 220

Homestead, 57; Patent, 14; Railroads, 54 to 60, 70, 71, 72, 73; Swamp, 1.

Proof.—*See Final Proof.*

Protest.—*See Contest.*

Publication.

Mines, 21, 29; Notice.

Public Notice.

No. 902, Public Sale in Montgomery, Ala., Land District; No. 903, Public Sale in Huntsville, Ala., Land District.

Public Sale.

Mines, 1.

Quarter Section.

1. The entry involved is not for detached tracts, for they are in all respects contiguous, and the excess (12.93 acres) is less than the deficiency would be, were the quantity contained in the smallest legal sub-division subtracted . . . . . V. 12, p. 22

2. A quarter section is 160 acres as near as may be. A homestead entery largely in excess of that amount is not void, but is invalid as to the excess over 160 acres . V. 12, p. 205

Railroads.

1. It is the duty of the Land Department to primarily determine questions affecting the status of public lands. . . . . V. 12, p. 218

2. Railroad lands of Oregon declared forfeited by act of Congress, and restored under instructions of July 8, 1885, to the public domain, have been properly ascertained by the Land Department, and the subordinate officers must be governed thereby. V. 12, p. 218

3. Grants of land "in place," and grants of "quantity" defined . . . . . V. 12, p. 12

4. Where two grants conflict, the earlier grant takes the land . . . . . V. 12, p. 12

5. The act of Congress declaring forfeited, and restoring to entry, lands granted to the Texas Pacific Railroad Company, is held to apply to lands along the branch line of the Southern Pacific Railroad Company, where the same passes through lands withdrawn for the former company, as by the terms of the grant to said Southern Pacific, such lands were excepted therefrom in favor of the Texas Pacific Company. . . . . V. 12, p. 257

6. Instructions under the act declaring a forfeiture of certain lands granted to aid in the construction of a railroad from Portland to Astoria and McMinnville, in the State of Oregon . . . . . V. 12, p. 184

7. The instructions of March 18, 1885, are revoked. All lands withdrawn for the Texas Pacific R. R. are restored to the public domain . . . . . V. 12, p. 39

8. Title to the additional lands granted by act of March 3, 1865, does not pass without some act of selection on the part of the grantee . . . . . V. 12, p. 122

9. Lands granted to one company cannot be withdrawn for the benefit of another. V. 12, p. 219

10. Lands granted to the Oregon Central cannot be selected by the Northern Pacific, notwithstanding no withdrawals were ever made of the lands in question for the benefit of the Oregon Central, and the Northern Pacific withdrawals embraced the lands. V. 12, p. 219

11. The question of priority between two roads claiming right of way under act of March 3, 1875, is a question of fact to be determined by the courts. The Department cannot take official cognizance of such question . . . . . V. 12, p. 7

12. An agreed partition of lands in conflicting limits, under the law cited, is a practicable mode of adjustment, and may be approved by the Land Department . V. 12, p. 89

13. The fees paid may be credited as herein described . . . . . V. 12, p. 89

14. When by separate acts at different sessions of Congress railroad land grants are made to two different corporations or parties, it will not, although the general course and direction of the road named in each act is similar, be presumed that Congress intended that the construction of one road under any arrangement between the corporations and parties should secure the benefits of both grants. The later supersedes the earlier, or the two roads must be built to earn both grants . . . . . V. 12, p. 186

15. The equitable title claimed under the act of 1866 cannot be sustained, because it does not appear that the Secretary of the Interior ever recognized any right to indemnity lands thereunder, or selected these as such lands under that grant. . . . . V. 12, p. 186

16. The Atlantic & Pacific Co. has no grant of lands beyond the point where its line reaches the Pacific at San Buenaventura, and its designation of a route beyond that point to San Francisco was without authority of law, and void, and hence the withdrawals based upon such unlawful designation were without basis, unauthorized, and of no effect . . . . . V. 12, p. 239

17. This company has no grant for that portion of its road from a point in the Columbia Valley near Portland, Oregon, to Puget Sound, in Washington Territory. V. 12, p. 267

18. The instructions of March 20, 1885, are revoked. The original rule for fixing the terminal limits of railroad land grants is not altered. . . . . V. 12, p. 39

19. The railroad is not entitled to select (in either its granted or indemnity limits) lands lying west of its western terminus, it being the settled practice to allow no selections beyond the terminal limits of a railroad, defined by a line drawn at right angles with the general route of the road at such terminus. V. 12, p. 22

20. The tracts in question were all included in claims initiated prior to the definite location of the Union Pacific Company's road, and were thereby excepted from the grant. The selection of the same by the Central Pacific R. R. Co., is therefore held for cancellation . . . . . V. 12, p. 208

21. The line of definite location of a railroad, which determines the rights of railroad companies to land under land grant acts of Congress, is definitely fixed, within the meaning of those acts, by filing the map of its location with the Commissioner of the General Land Office at Washington . . . V. 12, p. 9

22. Under the acts granting lands to aid in the construction of a line of railroad from the Missouri River to the Pacific Ocean, the claim of a homestead or pre-emption entry, made at any time before the filing of that map in the General Land Office, had attached, within the meaning of those statutes, and no land to which such right had attached, came within the grant . . . . . V. 12, p. 9

23. The subsequent failure of the person making such claim to comply with the acts of Congress concerning residence, cultivation, and building on the land, or his actual abandonment of the claim, does not cause it to revert to the railroad company and become a part of the grant. The claim having attached at the time of filing the definite line of the road, it did not pass by the grant, but was, by its express terms, excluded, and the company had no interest, reversionary or otherwise, in it . . . . . V. 12, p. 9

24. The act of July 3, 1866, which author-

ized the Secretary of the Interior to withdraw certain lands from *sale*, on filing a map of the *general route* of the road with him, did not reserve such lands from entry under the *pre-emption* and *homestead* laws. V. 12, p. 9

25. The right obtained by the company upon filing its map of route in the General Land Office is a statutory right confirming a franchise upon a private corporation, and such statutes must be strictly construed and every condition precedent actually complied with. V. 12, p. 147

26. The filing of the map in the office of the Secretary, August 15, 1872, was not a compliance with the terms of the grant. The grant of this road attached April 16, 1874, when the law was complied with by the filing of the map in the General Land Office. V. 12, p. 147

27. In view of the facts presented, the Commissioner of the General Land Office, is directed to ascertain the length of the railroad of this company . . . . . V. 12, p. 147

28. On the ground that the tracts in question were embraced in the withdrawal of 1879, the applications of Parker and Hopkins are rejected . . . . . V. 12, p. 6

29. Porter's claim to the land in question excepted it from the operation of the withdrawal, and the company has no plea in its favor except the laches of Hamilton in not placing his claim of record within the prescribed time; but such laches can only be taken advantage of by the next settler in order of time. The company is not such claimant. Hamilton having initiated a lawful claim to the land, his failure to appeal does not prevent his claim from excepting the land from the withdrawal for indemnity purposes, and his right to file for same is unquestionable. V. 12, p. 277

30. The temporary withdrawal of certain township plats did not except all the lands embraced therein from the operation of the railroad grant . . . . . V. 12, p. 73

31. Tracts in odd-numbered sections within the Texas Pacific grant in the possession of qualified settlers at date of railroad withdrawal, October 15, 1871, are subject to entry at this time at rate of $1.25 an acre. V. 12. p. 149

32. The failure of the local land officers to post a valid State selection on their records, or to report the same, does not destroy the validity of such selection; and such a selection will except the land from a subsequent railroad grant . . . . . V. 12, p. 6

33. Pending Congressional action, selections by the railroad company will not be considered or entertained . . . . V. 12, p. 122

34. In view of pending Congressional action, selections for this road will not be considered, or further selections be entertained at the present time . . . . . V. 12, p. 122

35. The final location (on which the fee of $2 for each 160 acres or fractional part thereof is chargeable) is made when the list of selections has been examined by the Register and Receiver for approval . . . V. 12, p. 58

36. One railroad company cannot go into the granted limits of another company for indemnity lands . . . . . V. 12, p. 193

37. An unexplained discrepancy having existed for many years between the indemnity limit diagrams on file in the local office and General Land Office respectively, and the rights of settlers in the meantime having intervened prior to selection, the company appear to be debarred from asserting a claim to the land . . . . . V. 12, p. 137

38. Where, at the date of the definite location of a land-grant railroad, any of the odd-numbered sections within the granted limits of the road had been sold by the government, or the pre-emption rights of settlers had attached to the same, the company is entitled to select an equivalent quantity of lands in lieu thereof from the indemnity limits. The right to indemnity for lands found to have been thus disposed of is not confined to such as were disposed of between the date of the granting act and the date of the definite location of the road; but, on the contrary, such right exists if, when the final location of the road is made, it is found that a portion of the sections have been disposed of by the Government without reference to the *time* of such disposition . . . . . V. 12, p. 12

39. Circular as to railroad indemnity selections . . . . . V. 12, p. 148

40. The tract involved is within the indemnity limits of the road, and the application of the company to select was rejected March 26, 1884, for the reason that it was embraced in the homestead entry of Hunt . V. 12, p. 302

41. As Hunt's entry was made subsequent to the expiration, and prior to revival of the grant, if not otherwise valid, it was confirmed by the 3d section of Act of April 21, 1876. V. 12, p. 302

42. Unless the railroad company interested be found entitled, there is no basis for relinquishment and lieu selection under the act of 1874 . . . . . V. 12, p. 22

43. The act of June 22, 1874, offers an inducement to such railroad companies as may be *found entitled* to relinquish in favor of certain settlers, and receive other lands in lieu of those thus surrendered. Hence, unless the company be found entitled, there is no basis for relinquishment and lieu selection. V. 12, p. 56

44. A railroad company is not authorized under the act of June 22, 1874, to relinquish unselected lands lying within the indemnity limits of the grant, and select other lands in lieu thereof . . . . . V. 12, p. 194

45. Where a pre-emptor whose filing embraced a quarter section, made entry of only forty acres, he relinquished thereby the remaining 120 acres, and a railroad grant taking effect thereafter may include such relinquished land . . . . . V. 12, p. 56

46. Land withdrawn for a railroad company cannot, upon relinquishment of said company, come within the terms of a withdrawal for another railroad company which took effect prior to that date; but are, from

the date of such relinquishment, open to settlement and entry . . . . . V. 12, p. 55

47. The right of a railroad company to relinquish lands and receive indemnity therefor under the act of June 22, 1874, cannot be made to turn upon the legality, or illegality, of the settler's entry . . . . . V. 12, p. 138

48. The land was selected by the company and such selection approved. The State through which the grant to the company was made, subsequently relinquished to the United States all claim to the land, in accordance with an act of the legislature. As the company accepted the terms of said act, its right under said selection terminated with the relinquishment of the State . . . V. 12, p. 269

49. In view of the company's relinquishment in favor of certain settlement rights, hearings will be ordered in case of applications to enter lands selected by the company, to ascertain whether the applicant is entitled to the benefit of said relinquishment.

V. 12, p. 219

50. Entries and filings may be allowed for unselected lands upon *prima facie* showing that the applicant is within the terms of said relinquishment . . . . . V. 12, p. 219

51. Due notice of the allowance of such entries and filings will be given the company, and opportunity allowed the same to contest the settlers' claim . . . . . V. 12, p. 219

52. Whether said company has waived its claim, or has no claim to the tracts in the odd-numbered sections, are questions on which the company has a right, under the Rules of Practice, to have the adjudication of the department as an appellate tribunal.

V. 12, p. 240

53. Circular as to right of way railroads.

V. 12, p. 184

54. Under the act of 1866, granting land to the California and Oregon Railroad, lands outside the forty-mile limits of the specific grant, and within the exterior limits of an alleged Mexican grant, are subject to selection in lieu of the alternate odd sections otherwise disposed of, at the time of the definite location of the road, situated within the forty-mile limit, at any time after the final rejection of such Mexican grant . . . . V. 12, p. 317

55. The grant does not attach to the odd sections of land outside the forty-mile limit of the specific grant, until the selection is actually made by the railroad company under the direction of the Secretary of the Interior, in lieu of lands otherwise disposed of within said limit . . . . . V. 12, p. 317

56. If at the time such selection of outside lieu lands is made, a claim under a Mexican grant embracing the lands selected within its exterior limits has been finally rejected, the lands have ceased to be *sub judice*, and are subject to selection . . . . . V. 12, p. 317

57. Although such lieu lands have been selected and patented prematurely, before the final rejection of the grant, yet, in a suit by the United States to vacate the selection and patent, commenced long after the final rejection of the grant, on the ground that it was issued by mistake, will not be sustained where it does not appear that any private party has acquired any interest in the lands so selected, or that the government has become subject to any obligation in relation to said land, and has sustained no injury by reason of such premature selection and patent . . . V. 12, p. 317

58. In such case, if the patent were vacated, the railroad company would now be entitled to select an equal amount of other lands within the limits, and even to select the same lands, they being *now* subject to selection, and to receive a new patent therefor. A court of equity will not correct a mutual, innocent mistake from which no injury can result, when it would be inequitable to do so. It will not do a vain thing. . . . . V. 12, p. 317

59. The owners of the land at the time of filing a bill in equity to vacate a United States patent are indispensable parties to the bill; and where it appears at the hearing that the bill is filed only against parties who have no interest in the lands, it will be dismissed for want of necessary parties . V. 12, p. 317

60. Where three exterior boundaries of a Mexican grant, and the quantity of land, are designated, the fourth exterior boundary is found by running a line parallel to the opposite boundary, a sufficient distance therefrom to include the quantity of land called for.

V. 12, p. 318

61. The land involved is within the limits of the road, as shown by map filed as map of definite location, July 6, 1882, and also within that of a withdrawal ordered April 21, 1872, upon a map of general route filed February 21, 1872 . . . . . V. 12, p. 303

62. It is the definite location of a line of road—a location fixed beyond the power of the company to change it—that defines the granted lands. Until this is done, the lands are open to settlement notwithstanding the grant. Vaughn's settlement, though subsequent to the withdrawal of 1872, being prior to filing of map of definite location, is valid as against the company, and his application is held for allowance, subject to appeal.

V. 12, p. 303

63. Under the Dunmeyer decision, preemption filings of record at date of definite location of road except the lands covered thereby from the grant. Patent for such lands cannot issue to the company . . V. 12, p. 161

64. An existing homestead entry excepts the land covered thereby from the effect of a withdrawal on the filing of a map of general route, and upon the cancellation of such entry, prior to the definite location of the road, the land is subject to appropriation by the first legal applicant. . . . . V. 12, p. 138

65. The right of purchase conferred upon the homesteader by the act of June 15, 1880, inures to the benefit of his widow. In this case, as the widow was entitled to purchase under said act, when the road was definitely located, such right excepted the land from the operation of the grant . . . . V. 12, p. 138

66. A withdrawal of land by the General Land Office when, as in this instance, with-

drawals from settlement, entry or other appropriation are not required by law, are effective only as information in defining the limits within which indemnity selections may be made in a proper time and manner, but are not operative as a prohibition of settlements and entries within such limits, under the public land laws, prior to the time when a lawful selection by the railroad company has actually been made . . . . . V. 12, p. 135

67. The homestead entries in question operated to except the land covered thereby from the grant to this railroad company. On cancellation thereof the land became subject to entry on selection by the first legal applicant. This company selected the land, and the same was certified for its benefit, and thereby title passed from the United States long prior to the claim of Bollman, whose entry will be canceled . . . . V. 12, p. 218

68. An unperfected settlement claim for offered land, existing at the date the grant becomes effective, held sufficient to exempt the land therefrom . . . . . V. 12, 292

69. Under the general rule that the judgment of a court cannot be attacked in a collateral proceeding, the question as to whether the Department had legal jurisdiction of the matter formerly acted upon herein, will not be entertained. . . . . V. 12, p. 293

70. Specifically defining the exterior boundaries of the Rancho Azusa, and determining the settlement of the claim, therefore it is held in conclusion that said claim was sub judice until May 29, 1876, when patent issued thereon, consequently that the odd-numbered sections within the common limits of said claim and the grant of March 3, 1871, to the company, were in reservation, and did not pass under said grant . . . . . V. 12, p. 293

71. Legal sub-divisions of odd-numbered sections within railroad limits, lying upon the original boundaries of a rancho, the major portions whereof are without such boundaries, inure to the railroad grant . V. 12, p. 207

72. The greater portion of the land in question having been embraced within the limits of the rancho named, which was *sub judice* at the date the Southern Pacific Railroad Company's map was filed, and when the subsequent order of withdrawal for Atlantic & Pacific Railroad reached the local office, was excepted from the grant to the first-named and the withdrawal for the last-named company, and is subject to disposal as public lands. V. 12, p. 301

73. The land in controversy was at the date of the railroad grant and of definite location reserved, being then within the claimed limits of an unadjudicated Mexican grant. V. 12, p. 207

74. The relinquishment, on which the filing was canceled, having been procured through duress, was void, and the filing is therefore re-instated . . . . . V. 12, p. 291

75. The pending appeal of a pre-emptor from the rejection of his filing will operate to bar selection by the railroad company. V. 12, p. 279

76. The soldier's homestead entry, though made by an agent, and alleging falsely that some member of the soldier's family was living upon the land, was not void, but could have been perfected by the claimant or avoided by the government for the defects shown. It was finally canceled for abandonment, but being of record at the time the grant took effect, the tract involved is excepted therefrom . . . . . V. 12, p. 39

77. While the entry of Easton served to except the land from the operations of the railroad grant, his right under such entry was forfeited by his failure to comply with the homestead law. Final proof should not be submitted while the right to make the same is pending on appeal . . . . . V. 12, p. 259

78. In 1874, on contest between these parties, the land was awarded to the company and the cancellation of the entry directed. This judgment was never carried into execution, and the entry in question falling within the terms of section 2 of the act of April 21, 1876, is held to be confirmed thereby. V. 12, p. 280

Appeal, 8; Indian, 8; Private Lands, 1, 6; School Lands, 1, 8; Timber Lands, 11, 12, 13.

Rancho Azusa.

Consideration thereof . . . V. 12, p. 292

Red Cliff Indian Reservation.

Railroad right of way through. V. 12, p. 231

Register and Receiver.

1. Register's certificate on daily cash book. V. 12, p. 262

2. As the money in question was merely deposited with the Receiver, and has not been accounted for nor covered into the treasury, it is a case between the claimant and the Receiver . . . . . V. 12, p. 63

3. Official envelopes will hereafter be furnished you, with the name of the location of your offices in blank . . . . . V. 12, p. 310

4. Under section 3 of the act of July 5, 1884, 23 Statutes, page 58, it is necessary that the name of the place where your office is located be endorsed on the envelopes before they are used . . . . . V. 12, p. 310

5. As a means of controlling the official action of public officers in a matter affecting private rights, the writ of injunction is the correlative of the writ of mandamus; and whenever, in such a case, the latter will issue to compel affirmative action, the former may issue to restrain the same; but neither can be used to control or direct official judgment or discretion . . . . . V. 12, p. 231

6. An injunction will not issue to restrain the Register and Receiver from receiving and allowing applications to enter certain lands within their district, although it may appear, in the judgment of the court, that the same belongs to the plaintiff by legislative grant, so long as there is room for difference of opinion on the question, or its determination involves the exercise of official judgment. V. 12, p. 231

7. Many of the Registers, in their monthly returns made to this Office, of patents deliv-

ered, accompanied with the duplicate receipts and certificates and *other* evidence upon which they were delivered, being affidavits of the loss of the duplicate receipts and certificates, fail to note on said *affidavits* the character of the entry and its number. V. 12, p. 90

8. When Registers and Receivers make unauthorized expenditures, claims therefor cannot be allowed. . . . . V. 12, p. 62

9. Receivers are to pay into the Treasury the *gross amount* of proceeds of such sales. No part can be withheld for compensation of Register and Receiver, or for clerk hire. V. 12, p. 23

10. Instructions to Registers and Receivers as to who should receive and account for moneys paid to local officers . . . V. 12, p. 2

11. Surrender of office—how effected. V. 12, p. 63

Contest, 3; Fees, Practice.

Rehearing.

1. In view of the allegations of incomplete record in this case, a rehearing is ordered to ascertain certain facts as set forth. V. 12, p. 19

2. A rehearing cannot be secured on the ground that the evidence of the applicant's witnesses was not properly transcribed, it being apparent that the applicant and his attorney had full opportunity to learn such alleged fact, and act thereon, while the case was in the local office . . . . . V. 12, p. 250

3. It is incumbent upon the contestant to come to trial fully prepared to establish his charges, and a new trial will not be granted on his petition except for the most cogent reasons . . . . . V. 12, p. 114

Appeal, 2; Contest, 17.

Relinquishment.

1. The validity of relinquishment cannot be impeached on the ground that it was not executed by the entryman when the whereabouts and identity of such alleged entryman are not shown . . . . . V. 12. p. 226

2. When a relinquishment is filed the entry immediately ceases to exist. The land then goes to the first legal applicant . V. 12, p. 66

3. All rights of the entryman cease with voluntary relinquishment . . . V. 12, p. 179

4. The local office should not refuse to act upon a relinquishment on account of the form in which it is executed. Where, pending contest, a relinquishment is filed by a stranger to the record, with application to file declaratory statement, the filing should be received, subject to the right of the contestant. V. 12, p. 118

5. Where a party presents the relinquishment of a pre-emption entry, and at the same time presents his application to make homestead entry, his right is superior to that of a trespasser who is living upon the land at the date of such relinquishment. The filing of the relinquishment and the application to enter constitutes one act . . . . . V. 12, p. 169

Contest, 25, 37, 38; Homestead, 6; Mines, 7; Pre-emption, 38; Preference Right, 1; Railroads, 42 to 50, 74.

Repayment.

1. The act of June 16, 1880, provides for repayment of fees and commissions only in cases where entries have been canceled for conflict, or erroneously allowed, and cannot be confirmed . . . . . V. 12, p. 58

2. In the present case the entry was not canceled for conflict, nor was it erroneously allowed; but the party had already made one entry under the timber culture laws when he made the entry in question. Repayment is therefore declined . . . . . V. 12, p. 58

3. Repayment will not be allowed except when title cannot be given to the purchaser. V. 12, p. 269

4. As the approved circular adopts the policy of the repayment system, you are now instructed that this practice will be renewed in conformity with the circular of December 1, 1883, (10 L. O., 306) . . . V. 12, p. 118

5. The party having made pre-emption entry and final proof, and afterward made homestead entry on another tract, and, on report being called for as to whether the pre-emptor and homesteader were the same person, having relinquished his pre-emption entry and applied for return of purchase-money, said entry being thereupon canceled, and it being evident from the evidence that said entry was not made in good faith, repayment is not recommended . . . V. 12, p. 75

6. There having been a misdescription in the entry, and the tract Alteholz intended to enter, and to which he makes application to change, having been patented to another, the only relief that can be afforded will be a return of the purchase money on application therefor . . . . . V. 12, p. 59

7. Repayment may not be made where the entry is valid, or can be confirmed. Patent having issued, the regulations require, before repayment, a duly executed deed of relinquishment recorded in the proper office of registration where the land is situated. V. 12, p. 269

8. When a party voluntarily abandons completion of his homestead entry, he is not entitled to repayment of fees and commissions. V. 12, p. 54

9. The reason for cancellation of these locations, is the alleged fact that fictitious names were used by the parties, thus showing the want of competent grantees of the United States in issuing the patents, and a consequent avoidance of the reputed assignments. If such be the fact, there is an equal want of parties to take the warrants by assignment, and no authority for the recognition of the claimed assignees to receive repayment. V. 12, p. 44

Desert, 9; Fees, 3; Survey, 6, 7.

Reservation.

Indian, Military, Pre-emption, 39, 40; Private Lands, 1, 6, 10; Timber Culture, 8.

Residence.

Contest, 18, 23; Final Proof, 6; Homestead, 7, 9 to 33, 36, 39, 47, 48, 49, 61, 64, 66, 67; Naturalization, 3; Pre-emption, 29 to 37, 41, 56; School Lands, 7; Town-site, 2.

Review.

1. Notice of a motion for review should

be given within the time allowed for filing such motion; but as the Rules of Practice are not explicit in such requirement, a failure to thus serve notice will not defeat the consideration of a motion for review after due notice. V. 12, p. 190

2. The opposite party should be allowed ample opportunity to be heard and to obtain copies of all affidavits filed with a motion for review . . . . . V. 12, p. 141

3. The object of a motion for review is not to re-argue the case more thoroughly. A motion to review a motion to review cannot be granted . . . . . V. 12, p. 178

4. An application to review a decision not being filed within the thirty days required by Rule 77, and not being accompanied by an affidavit of good faith as required by Rule 78, cannot be granted. Its subsequent filing under motion of *ne re cipiatur* by the opposite party was not a compliance with the rule. V. 12, p. 66

5. When by the decision of the General Land Office the claim of the State to any tract is rejected and a review of such action is sought either through appeal, or by *certiorari*, the State should bring itself within the Rules of Practice governing such proceedings. V. 12, p. 249

Appeal, 2; Attorney, 10; Certiorari, 2, 5.

Revised Statutes.

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Section 237 . . . . . V. 12, p. 316
Section 250 . . . . . V. 12, p. 316
Section 441 . . . . . V. 12, 42
Section 453 . . . . . V. 12, pp. 42, 211
Section 456 . . . . . V. 12, p. 244
Section 910 . . . . . V. 12, p. 167
Section 1946 . . . . . V. 12, p. 203
Section 1992 . . . . . V. 12, pp. 2, 315
Section 1994 . . . . . V. 12, p. 315
Section 2165 . . . . . V. 12, p. 222
Section 2172 . . . . . V. 12, p. 271
Section 2223 . . . . V. 12, pp. 244, 245
Section 2238 . . . . . V. 12, p. 316
Section 2240 . . . . . V. 12, p. 316
Section 2241 . . . . . V. 12, p. 316
Section 2243 . . . . . V. 12, p. 316
Section 2258 . . . V. 12, pp. 5, 151, 247
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Section 2260 . V. 12, pp. 44, 255, 286, 315
Section 2261 . . V. 12, pp. 105, 132, 228, 254, 315
Section 2262 . . V. 12, pp. 106, 107, 222
Section 2263 . . . . V. 12, pp. 105, 312
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Section 2267 . . . . . V. 12, p. 105
Section 2269 . . . . . V. 12, pp. 87, 182
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Section 2277 . . . . . V. 12, p. 62
Section 2283 . . . . . V. 12, p. 315
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Section 2293 . . . . . V. 12, p. 40
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Section 2297 . . . . . V. 12, p. 276
Section 2298 . . . . . V. 12, p. 22
Section 2299 . . . . . V. 12, p. 312
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Section 2304 . . . . V. 12, pp. 118, 191
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Section 2319 . . . . . V. 12, p. 248
Section 2324 . . . . V. 12, pp. 215, 264
Section 2325 . . V. 12, pp. 77, 159, 215, 216, 264
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Section 2329 . . . . . V. 12, p. 166, 216
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Section 2331 . . . . . V. 12, p. 216
Section 2345 . . . . . V. 12, p. 247
Section 2347 . . . . . V. 12, p. 203
Section 2357 . . . . . V. 12, p. 150
Section 2362 . . . . . V. 12, p. 269
Section 2363 . . . . . V. 12, p. 269
Section 2366 . . . . . V. 12, p. 316
Section 2373 . . . . . V. 12, p. 104
Section 2386 . . . . . V. 12, p. 247
Section 2387 . . . . V. 12, pp. 150, 151
Section 2392 . . . . . V. 12, p. 247
Section 2401 . . . V. 12, pp. 62, 123, 124
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Section 2403 . . . . . V. 12, pp. 62, 124
Section 2414 . . . . . V. 12, p. 260
Section 2447 . . . . . V. 12, p. 210
Section 2449 . . . . . V. 12, pp. 43, 57
Section 2450 . . . . . V. 12, p. 195
Section 2457 . . . V. 12, pp. 69, 195, 290
Section 2482 . . . . . V. 12, p. 243
Section 2483 . . . . . V. 12, p. 243
Section 2484 . . . . . V. 12, p. 243
Section 2488 . . V. 12, pp. 41, 57, 58, 316
Section 2556 . . . . . V. 12, p. 316
Section 3146 . . . . . V. 12, p. 316
Section 3147 . . . . . V. 12, p. 316
Section 3617 . . . . . V. 12, p. 23
Section 3677 . . . . . V. 12, p. 62
Section 3679 . . . . . V. 12, p. 63
Section 3683 . . . . . V. 12, p. 62
Section 5182 . . . . . V. 12, p. 316
Section 5498 . . . . . V. 12, p. 189
Section 5596 . . . . V. 12, pp. 243, 247
Section 5597 . . . . . V. 12, p. 243

Sante Sioux Indian Reservations.

Instructions as to the. . . . . V. 12, p. 90

School Lands.

1. Neither railroad companies nor settlers have a right to take timber from school lands for any purpose whatever . . . V. 12, p. 60

2. The erroneous certification of a tract in the place of land selected deprives the Department of further jurisdiction over the land. V. 12, p. 221

3. In view of the equities of Willingbeck he is allowed to enter part of a school section in Utah surveyed in 1856, notwithstanding he

did not make personal settlement until 1870. He purchased the improvements of a party who settled in 1848 . . . . . V. 12, p. 89

4. Such land cannot be selected as indemnity for single minimum losses. A selection defective in part is invalid as a whole upon the face of the record, and such selection must not hereafter be allowed . V. 12, p. 139

5. As this selection was made upon a proper basis, the homestead entry in question is held for cancellation . . . . V. 12, p. 175

6. Instructions as to indemnity school lands. V. 12, p. 175

7. At any time, when sections sixteen and thirty-six are ascertained by government surveys, if they contain a dwelling, or the cultivation of any portion of the land, on which some one is residing and asserting a claim to it, the title of the State does not vest, and she must select other land as indemnity therefor. V. 12, p. 277

8. Congress, by the word claim, not lawful claim, did not mean that it must be such as would result in a perfect title, but intended it in its ordinary sense, as claimed or demanded, a settler's claim . . . V. 12, p. 277

Mines, 4, 5.

Scrip.

1. The assignment of a military bounty land warrant in blank, is not authorized under the law or regulations of the Department. V. 12, p. 260

2. The location of a warrant and issuance of patent thereon operates as a cancellation thereof . . . . . V. 12, p. 260

3. The land in question was entered thirty years ago, but the military bounty land warrant never reached the General Land Office. In view of the facts, claimants are allowed to make homestead entries of the land. V. 12, p. 211

4. The act of June 2, 1858, does not authorize the issue of scrip for any part of a confirmed claim, which at the date of its location was not in conflict with a prior confirmation. Said act, while confirming generally the decisions in favor of claimants made by the commissioners named therein, does not necessarily include a claim specifically confirmed by a prior private act. Though the government under its confirmatory act and patent has relinquished its title to the tracts for which indemnity is sought, certificates of location therefor will not issue if it appears that such land was in fact never granted and hence not lost . . . . . V. 12, p. 209

5. Land in the condition described herein, is not unoccupied land, and is not subject to location with Sioux half breed scrip. V. 12, p. 75

6. The improvements made on behalf of the Indian Sioux half breed must be valuable. Merely plowing an acre and a half does not comply with the law. These betterments must have been on the land at date of location. V. 12, p. 45

7. One who has placed such scrip on unsurveyed public lands, is not permitted to cut and remove timber from the location, except for actual and necessary improvements thereon and surplus on portion cleared, not needed for improvements, which may be sold. The same rule applies to locations by such scrip on surveyed public lands . . . . V. 12, p. 63

8. A power of attorney to sell land by a Sioux half breed, will authorize the conveyance of land subsequently acquired by means of scrip issued to such half breed under the act of Congress of July 17, 1854, if such land come within its terms. Such power cannot be defeated by parol evidence that it was executed to effect a transfer of such scrip. V. 12, p. 234

9. Consideration of the use of such scrip by purchasers thereof . . . . . V. 12, p. 234

Repayment, 9.

Settlement.

Donation, 1; Homestead, 8, 12, 26, 57, 63, Naturalization, 3; Pre-emption, 1, 2, 3, 14 to 27; Railroads, 62, 68; School Lands, 3; Timber Culture, 4; Timber Lands, 1; Town-site, 2; Trespass.

Sickness.

Pre-emption, 56.

Sioux Indian Reservation.

Indians, 9 to 12.

Soldier.

Homestead, 58 to 70; Pre-emption, 44; Railroad, 76.

Sparks, W. A. J.

Sketch of life of . . . . . V. 12, p. 1

Special Agent.

1. A special agent's report conveys information which may serve as the basis for further action against a claimant, but is not legal testimony, and cannot determine rights. This can be done only upon formal trial, after due notice to the party in interest. A claimant under the land laws can only be deprived of his rights by due process of law, which contemplates notice of all the action against him, as in ordinary legal proceedings. V. 12, p. 263

2. When a hearing is ordered on the report of a special agent, the local office should not consider the *ex-parte* testimony submitted by the claimant in making his final proof. V. 12, p. 250

3. The entry was canceled on a special agent's report, and a hearing subsequently held, but the witnesses then testifying were not subjected to cross-examination.

Held, that further evidence is required, and that a rehearing should be accordingly ordered. . . . . V. 12, p. 226

4. How weekly reports of special agents should be prepared . . . . . V. 12, p. 231

5. Circular of instructions to special agents. V. 12, p. 126

Contest, 8, 14, 49; Desert, 10; Timber Lands, 7, 9.

Stockslager, S. M.

Address by . . . . . V. 12, p. 196

Survey.

1. Instructions as to filing of plat of survey. V. 12, p. 244

2. An application by *one* settler in an entire township is not sufficient cause to authorize the survey of said township . V. 12, p. 123

3. Deposit surveys are restricted by law to surveys for homestead and pre-emption settlers; hence it follows that lands not adapted to nor needed for such settlement are not surveyable under the deposit system. V. 12, p. 123

4. Resurveys are not authorized under the deposit system. . . . . V. 12, p. 123

5. Where lands have been paid for with certificates of deposit on account of surveys, and the entry fails, the certificate being within the control of the Commissioner, and not in fact satisfied, may be returned and the invalid entry canceled . . . . . V. 12, p. 62

6. Where the payment has been carried into the Treasury as cash, repayment must be made as provided by statute out of money in the Treasury . . . . . V. 12, p. 62

7. In cases of exception, falling within the repayment acts, the repayment must be made in the same manner . . . . . V. 12, p. 62

8. The duties of Surveyors-General are by law performed under the direction of the Commissioner of the General Land Office and the supervision of the Secretary of the Interior. No authority is given the Surveyor-General to "determine" anything. He simply "reports." The Commissioner "determines" whether such report is sufficient. V. 12, p. 41

9. Certain California surveys of land selected by the State are held valid. V. 12, p. 91

10. Duplicate oaths of the deputy surveyor's assistants, to replace originals alleged to have been lost from the files, should not be accepted with the field notes, without a satisfactory showing that said originals were duly made and filed, and that due diligence has been used to procure new oaths from said assistants . . . . . V. 12, p. 317

11. Under the State act of April 27th, 1863, a survey made prior to application therefor is without official sanction, and in no sense constitutes a segregation survey in California. V. 12, p. 316

12. How certain islands in St. Marie river, Michigan, should be surveyed . V. 12, p. 44

13. In the survey of an island situated in a river, due regard should be had for the rights of owners on either bank thereof. V. 12, p. 224

14. The omission in the original survey, of certain tracts of land in several townships, the lack of sufficient reason for the omission, and the evidence of errors in the original survey, are good grounds for ordering a re-survey. V. 12, p. 8

15. Owing to the status of the Indian claim, added to the presumption that the whole question will be submitted to Congress for requisite legislation as to the regular relinquishment of the Indian title, no more contracts for surveys will be awarded, and certain other contracts are indefinitely suspended. V. 12, p. 306

Desert, 5; Mines, 12, 13, 14, 18, 21; Private Lands, 2; School Lands, 7; Swamp, 2, 4, 5, 6, 8, 11, 12.

Surveyor.

Mines, 29.

Swamps.

1. State swamp selections found to be within the limits of the private claim, having been approved, subject to all valid objections, the State took no land by the approval that was not found to be free from the private claim on its final adjudication. . . . . V. 12, p. 41

2. The field notes of survey, as found in the General Land Office, constitute the proper basis for determining the character of the land claimed by the State . . . . . V. 12, p. 281

3. Proposed change in manner of adjusting the swamp grant to Arkansas. . V. 12, p. 282

4. Only the fourth section of the act of July 23, 1866, relates to swamp and overflowed lands in California, and, under the first clause of said section, the State has no claim unless the land appears upon the approved township survey and plat as swamp and overflowed. V. 12, p. 57

5. Where there is a discrepancy between the general description and the field notes of the boundary lines of the particular tract in question, the latter must control . V. 12, p. 57

6. The claim of the State under the second clause of said section is rejected, as the survey relied upon is not in conformity with the requirements thereof. . . . . V. 12, p 57

7. Land subject to periodical overflow, but susceptible of cultivation, does not pass under the swamp grant . . . . . V. 12, p. 57

8. The grant of swamp and overflowed lands to the State of California was of lands that were at the date of grant, "swamp and overflowed, and rendered thereby unfit for cultivation." A false return by a deputy surveyor, although approved by the Surveyor-General, does not constitute a grant. V. 12, p. 41

9. Memorandum respecting the legality of certifying the allowance of cash indemnity to the State of Ohio upon lists submitted by the Commissioner—being the amount of purchase money for public lands sold by the United States between the swamp land acts of 1850 and 1857, upon due proof made by the State that the same were swamp lands. V. 12, p. 233

10. Cash indemnity for swamp lands sold during the period intervening between the passage of the acts of 1850 and 1857, may be allowed to Ohio, and the field notes of survey on file in the General Land Office, are sufficient evidence as to the character of the lands sold . . . . . V. 12, p. 242

11. Although no appeal was taken from the finding of the district officers as to the character of the lands, it was the duty of the Commissioner of the Land Office to review the testimony taken at the hearing. The State elected not to take its swamp lands on the evidence furnished by the plats of survey and field notes, and is not bound by them; but this will not preclude the Department from consulting its records where the testimony is conflicting, in order to ascertain the true character of the land. . . . V. 12, p. 40

12. The report of the district land officers in this case is not final. It is like their report in a hearing ordered to inquire into the legality

of an entry, and it should appear from the testimony that the entry was illegal.
V. 12, p. 123

Telegraph Company.

1. A telegraph company, duly organized by the laws of any State, and having complied with all the legal requirements, may take material for construction from the public lands.
V. 12, p. 60

2. Otherwise, in case of a line to be constructed by an individual, or individuals, unincorporated, etc., as above, such would be liable to prosecution for trespass for taking public timber, etc. . . . . V. 12, p. 60

Tenant.

Homestead, 6; Pre-emption, 27; Timber Culture, 35.

Testimony.

Certiorari, 7; Contest, 56; Desert, 11; Homestead, 13; Pre-emption, 54, 55; Special Agent, 1; Timber Culture, 40.

Timber Culture.

1. Where two or more parties apply simultaneously to make timber culture entry of a certain tract, the privilege of entry should be awarded to the highest bidder.
V. 12, p. 72

2. In simultaneous applications to enter under the timber culture law, that party will have the preference who has improvements upon the land, no matter how slight, if placed there in good faith . . . . . V. 12, p. 206

3. Entries in the proportion of one hundred and sixty acres for every six hundred and forty acres may be allowed in sections containing an excess over the technical acreage of a section, where the subdivisional survey of said section will permit. . . . V. 12, p. 193

4. A timber culture entry having been prevented by a vacancy in the office of Receiver, and a pre-emptor subsequently settling upon the land while said office was closed, a hearing is ordered on the allegation of the timber culture applicant that he had occupied and cultivated the land prior to the said pre-emption settlement, and given said pre-emptor due notice of his claim . . . . . V. 12, p. 256

5. Where a timber culture affidavit is sworn to before a notary public, that officer must unequivocally certify that the affidavit was made within the limits of the land district where the land is situated . . . . . V. 12, p. 121

6. Where a timber culture applicant fails to state in his application his post-office address, and the paper is returned to enable him to supply the deficiency, a reasonable time should be allowed for the purpose before another party is permitted to make entry.
V. 12, p. 21

7. Applicant to enter under the act of June 14, 1878, should not be required to furnish proof, beyond the statutory affidavit, that he has declared his intention to become a citizen.
V. 12, p. 229

8. A pending application to amend an entry constitutes a reservation of the land so applied for . . . . . V. 12, p. 291

9. In view of the allegations made and the errors of the local office, the timber culture entry in question may be amended.
V. 12, p. 172

10. Under the statute law of Dakota, where a timber culture claimant dies before perfecting title to his land, leaving a widow and a father, but no issue, the widow inherits, as joint heir, one-half of his right in said claim, and his father the other half.
V. 12, p. 192

11. Where a party made a timber culture entry without examining the land, and relied upon the representations of a surveyor or land agent, such party cannot be allowed a second entry on showing that he was deceived by such representations . . . . . V. 12, p. 172

12. If a tract of land contains an adequate supply of timber naturally, 6,750 trees being the standard, it is not subject to timber culture entry, and an entry made under such circumstances is improper, illegal, and should be canceled . . . . . V. 12, p. 38

13. An entry will not be allowed upon a section that contains from forty to eighty acres of marshy land covered with a dense growth of small trees of the character used for domestic and farm purposes. V. 12, p. 193

14. The amendatory act of June 4, 1878, provides that the person applying shall make an affidavit stating, among other things, "that the section of land specified in his application is composed exclusively of prairie lands or other lands 'devoid of timber.'" Although the land does not contain sufficient timber to supply the wants of the number of inhabitants who would ordinarily occupy the section, yet under the plain language of the law the timber culture entry must be held for cancellation.
V. 12, p. 71

15. The Government makes no guaranty as to the quality or condition of the land it offers for entry; and where a party in making a selection of land relies upon the judgment of another, he must abide by that judgment whether it be good or bad . . V. 12, p. 229

16. A timber culture claimant in a state or territory where the mineral laws are not operative, would not jeopardize his claim by disposing of stone quarried therefrom.
V. 12, p. 39

17. Eight acres being broken the first year, the law did not require five acres additional to be broken the second year, but did require that the breaking done should aggregate ten acres at the end of the second year after entry . . . . . V. 12, p. 276

18. Evidence of good faith is satisfactory. Claimant paid for ten acres of breaking and supposed that he had that quantity. 8.73 acres is the exact breaking. To plant five acres to trees, claimant took part of the second year's breaking. The trees failed to grow. Contestant and witnesses swear that the trees were dead and withered at the time of planting. But as this is denied by claimant, his entry is allowed to stand . . . . V. 12, p. 5

19. Where a timber culture claimant fails to plant the second five acres to trees, seeds or cuttings during the fourth year, his entry is liable to cancellation . . . . . V. 12, p. 183

20. An entryman may take advantage of breaking upon the land at the date of his entry. The law is satisfied if the breaking and planting are performed within, or in advance of the required time . . . . . V. 12, p. 218

21. Unless the ground, after breaking, is properly prepared for tree planting within due time, the timber culture law is not complied with . . . . . V. 12, p. 121

22. The planting of osage orange trees or cuttings is not a compliance with the timber culture law . . . . . V. 12, p. 147

23. Work done by a timber culture entryman's vendor, or his agent, is equivalent to work done by himself. Hence, if an entryman purchases improvements found on his land at the date of his entry, he thereby makes them as much his as if they had been put there by his own hand . . . . . V. 12, p. 55

24. The claimant having purchased the right of a former entryman, may avail himself of the planting already done . . V. 12, p. 266

25. In view of the evidence, the entryman is held to be wanting in good faith, as the alleged replanting was done when the ground was not in a suitable condition V. 12, p. 207

26. Where a timber culture claimant intentionally fails to comply with the law as to planting and cultivating trees, and seeks to protect himself behind friendly contests, he will not, by hastily plowing, harrowing, and re-planting, be allowed to escape an honest contest . . . . . V. 12, p. 229

27. Such method of cultivation should be adopted in each locality as will protect and secure the growth of the trees . V. 12, p. 256

28. Although it appeared at the hearing in 1883, that the entryman had not replanted two acres that were destroyed by fire in 1881, it being shown that he had more than the requisite number of trees on the tract of his own planting to re-set the burnt tract, and that the replanting was only postponed for the ultimate good of the trees, the entry was not disturbed. V. 12, p. 256

29. As the evidence shows want of cultivation of the trees and seedlings, the timber culture entry of Pulver is ordered cancelled. V. 12, p. 5

30. The timber culture entryman should comply with the law during the pendency of a contest against his entry. In this case, however, the failure so to do is excused, as it was occasioned by the wrongful acts of contestant, and the entryman began to cure the default prior to the initiation of the contest based thereon. . . . . V. 12, p. 134

31. An affidavit asking for extension of time in timber culture cases, not corroborated, is no bar to contest . . . . . V. 12, p. 157

32. A married woman living with her husband may contest a timber culture entry, but she cannot make entry after cancellation of such entry unless then qualified to do so. V. 12, p. 267

33. Suit should be against "the heirs or legal representatives" of the entryman in case of contest against the entry of a deceased timber culture claimant . . . . . V. 12, p. 230

34. Entry for the purposes of speculation or fraudulent inception of entry is a satisfactory basis for contest against a timber culture entry. Entries made upon affidavits wilfully false will, upon proper proceedings, be canceled . . . . . V. 12, p. 271

35. In view of the peculiar facts of this case, Williams, the tenant, cannot be allowed to take advantage of his violation of contract in not planting trees to successfully contest Price's entry for non-compliance with law. V. 12, p. 71

36. The contest is dismissed for the reason that the testimony is not sufficient to cancel defendant's timber culture entry. V. 12, p. 98

37. The contestant is estopped from charging insufficient cultivation where he had control of the land for that purpose. V. 12, p. 229

38. An entry will not be canceled when substantial compliance with the law is shown. V. 12, p. 229

39. In view of Lea's good faith, his timber culture entry is allowed to stand. V. 12, p. 98

40. In view of the conflicting evidence and the burden of proof being upon the contestant, the timber culture final proof of Konold is allowed to stand . . . . . V. 12, p. 161

41. Final proof shows that 300 trees were planted and cultivated on each acre, and that 3,000 are now growing. *Held*, That, as the planting, etc., was performed as required by former act, and the whole number of trees exceeds that required by the latter—though covering a greater area—a substantial compliance with the law is shown . . . . V. 12, p. 301

Contest, 12, 52; Pre-emption, 23; Repayment, 2.

Timber Lands.

1. A decision should not be made on ex parte affidavits, but such affidavits may be the basis on which to order a hearing to determine the character of the alleged timber land and priority of settlement . . . V. 12, p. 209

2. In contests between settlers and claimants under the timber land act of June 3, 1878, the important consideration is the character of the land. The land in this case is held to be agricultural in character. V. 12, p. 209

3. The applicant should not, under the act of June 3, 1878, submit his proof until after the expiration of the sixty days of publication. V. 12, p. 295

4. The "adverse" or "valid" claim specified in the act refers to a claim initiated prior to date of the application. The issue raised by an adverse claim is as to the validity of such claim, while a protest calls in question the character of the land or the good faith of the applicant. . . . . V. 12, p. 295

5. Prior occupancy and improvement of land removes the same from purchase under the timber act, without respect to the qualifications of the person so holding or improving the land to legally appropriate the same under the settlement laws . . . . . V. 12, p. 305

6. When the timber applicant applies to

purchase money embraced in a *prima facie* valid pre-emption D. S., and makes the proper sworn statement, the pre-emptor should be notified to appear. The burden of proof is upon the timber applicant to show the invalidity of the pre-emption claim. . . . . V. 12, p. 44

7. Rules and regulations of December 15, 1885, are prescribed for the protection of the timber growing or being upon public lands covered by homestead or pre-emption entries. V. 12, p. 270

8. Instructions as to burned and scorched timber. . . . . V. 12, p. 270

9. Instructions to special agents as to saw mills upon public lands . . . . V. 12, p. 185

10. Under Sec. 1, act of June 15, 1880, a wilful trespasser could secure immunity from criminal proceedings by purchasing the land trespassed upon, but a wilful trespasser cannot be relieved from civil suit under said act. V. 12, p. 186

11. There can be no propriety in the United States prosecuting cases of trespass on *odd* sections within railroad limits, whether earned or unearned . . . . . V. 12, p. 59

12. There is no legal reason why a railroad company, when its grant is a present one, cannot institute proceedings for trespass on its lands . . . . . V. 12, p. 59

13. Under the act of March 3, 1875, the use of timber from public lands by railroad companies is limited to timber from adjacent lands taken for the purpose of construction. V. 12, p. 185

14. Boxing trees for turpentine is injurious, killing them if continued: and as title to the land remains in the United States until the law as to tillage, etc., has been fully complied with, any act, in the meantime, that would injure or destroy the timber, would constitute a trespass, and render him liable to prosecution and punishment. . . . . V. 12, p. 60

15. The measure of damage for trespass for boxing pine trees is the present and prospective injury to the trees subjected to such operation . . . . . V. 12, p. 128

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Townsite.

1. Sec. 2382 makes town lot entries analogous to pre-emption entries. So that when parties invoke the aid of the declaratory statement to protect their claim, they must be governed by the same rules as in pre-emption declaratory statements . . . . . V. 12, p. 74

2. Settlement followed by actual residence is required on one lot before entry can be allowed . . . . . V. 12, p. 74

3. When a party settles on a tract of land where the title is still in the government, no formal transfer is necessary to deliver it to another party—simple delivery of possession is all that is required . . . . . V. 12, p. 74

4. Townsite entries under Section 2288 R. S., are in the nature of pre-emption entries, and the party making the entry is required to make payment at the rate he would have to pay had he entered the land as a pre-emption. V. 12, p. 150

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July 4, 1884 (23 Stat. 186). Appropriations for the Indian Office . . . . V. 11, pp. 217, 347
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July 5, 1884 (23 Stat. 103). Military Reservations . . . . . V. 11, p. 159
July 5, 1884 (23 Stat. 158). Postage on Official Mail . . . . . V. 11, p. 195

LAWS, INSTRUCTIONS, RULINGS AND DECISIONS.

Abandonment.

1. Nothing shows abandonment of the land by the entryman, his absence being excusable. Jones' possession and retention of the land was trespass, and he acquired no rights thereby. . . . . V. 11, p. 229

2. To sustain a contest for abandonment, the entryman must be in default at date of affidavit of contest. Poverty excuses non-continuous residence. . . . . V. 11, p. 215

Contest, 31; Residence.

Abstract.—*See Mines.*

Acts of Congress.—*See Acts of Congress Cited and Construed, and Laws.*

The Land Department, as an executive branch, cannot consider the propriety or constitutionality of an act of Congress. V. 11, p. 237

Additional Entry.—*See Homesteads.*

Adjoining Farm Entry.

1. In view of the evidence, amendment is allowed and contest dismissed . V. 11, p. 212

2. Nothing in the homestead law requires that the title of an "original farm," to which the adjoining farm is made, should have been acquired under the public land laws. V. 11, p. 204

Adverse Claim.

Application, 3, 4, 6; Final proof, 12; Homestead, 8; Mines, 18, 19, 21, 22; Preemption, 1, 18; Timber Culture, 16.

Affidavit.

1. The date of contest is the date the affidavit of contest reaches the local land office, not the date when it is sworn to. . . V. 11, p. 83

2. The affidavit required of applicants under Sec. 2294 R. S. may be made before probate judges in Dakota when acting in a clerical capacity. . . . . V. 11, p. 37

3. An affidavit of contest and testimony taken before a notary who is also the attorney for the contestant, is improper . V. 11, p. 194

4. An affidavit of contest is not invalid because made before the contestant's attorney. V. 11, p. 291

5. The affidavit of contest must state that the affiant is not in possession of the relinquishment, and that he is not the purchaser of the same. . . . . V. 11, p. 293

6. As a material matter was omitted from the affidavit on which publication of notice was ordered, the notice of contest is defective. But in view of certain evidence, this technical objection is overruled, and Libby's homestead entry is ordered cancelled . . . . V. 11, p. 2

7. The affidavit of contest as described is satisfactory. . . . . V. 11, pp. 226, 247, 345

8. In view of the wording of the contest affidavit and the contestant's good faith, the timber culture entry is cancelled, and the contestant is allowed to make homestead entry as of date when he initiated contest. V. 11, p. 43

9. Sufficient grounds for notice by publication are not alleged . . . . . V. 11, p. 226

10. The defects in affidavit of contest are considered as cured by the jurisdiction assumed by the Register and Receiver. Several errors and defects pointed out . . . . V. 11, p. 72

11. The defect in the affidavit of contest in question may be cured by a supplemental affidavit. . . . . V. 11, p. 212

12. It is immaterial whether the affidavit of contest was corroborated or not, if the parties appear and go to trial . . . . V. 11, p. 216

13. The filing of an affidavit of contest against a timber culture entry does not prevent the initiation of contest by another party, unless followed within reasonable time by notice and hearing. . . . . V. 11, p. 201

14. Must be made in timber culture cases after the year has expired. The difference of one day is material . . . . . V. 11, p. 42

15. An affidavit of H. to contest was received at the local office in the same mail that brought the relinquishment of the entry involved, accompanied by an application of V. to enter. As the affidavit to contest was not accompanied by a deposit to pay cost of hearing, V.'s application to enter is allowed to proceed . . . . . V. 11, p. 339

Abandonment, 2; Appeal, 11; Attorney, 4, Coal Lands, 1; Contest, 32, 36; Homestead, 76; Notice, 5, 10, 11; Railroad, Scrip, 4, 6; Timber Culture, 33.

Agent.—*See Attorneys.*

Agricultural College . . V. 11, pp. 29, 347

Agricultural Lands.

Contest, 28; Guano, 2; Private entry, 1.

Alabama.

Endowment of University of . V. 11, p. 63

Mines, 3, 4, 5; Railroads, 1; State selections, 2.

Alaska.

Civil government in . . . . . V. 11, p. 93

Amendment.

Adjoining farm entry, 1; Contest, 4, 36, 41; Homestead, 20; Pre emption, 23; Railroad, 15; Survey, 12; Timber culture, 14.

Appeal.

1. A *bona fide* intention to appeal is not equivalent to an appeal, nor is a *bona fide* intention to settle equivalent to a settlement. Equities in this case being equal, the rule of practice

is enforced, and the application for permission to appeal is dismissed . . . . . V. 11, p 66

2. Proceedings in cases of appeal from decisions of the local officers . . . V. 11, p. 131

3. Does not lie from the action of the local officers to the Secretary of the Interior. V. 11, pp. 50, 294

4. Cases should not be held for thirty days where contests are dismissed for default in appearance . . . . . V. 11, p. 247

5. Failure to appeal because of temporary closing of the local office should not injure the rights of a claimant who appeals after the time therefor has expired . . . . . V. 11, p. 84

6. As defendant's attorney neglected to take an appeal from the local officer's decision within the proper time, further action by the land department is unnecessary . V. 11, p. 262

7. Where a contestant waives an appeal for the purpose of initiating another contest against the same homestead entry, the matters will be treated as *res adjudicata*, and the second contest will be dismissed. V. 11, p. 355

8. A refusal by the Commissioner of the General Land Office to grant a trial may, if it amount to a denial of right, be appealed from. V. 11, p. 354

9. If the Commissioner refuse an appeal from his own decision, the case may be certified to the Secretary for his action. V. 11, p. 50

10. Where the Commissioner deems a hearing necessary, an appeal to the Secretary from an order for such hearing will not lie, The ordering of a hearing in this case was eminently proper . . . . . V. 11, p. 212

11. Where an appeal is taken from the action of the Commissioner, application for review of such action is not allowed. All *ex parte* affidavits and documents filed in a contested case after appeal is taken must be returned to the sender. . . . . V 11, p. 239

12. An appeal does not lie from the action of the Commissioner cancelling an entry by order of the Secretary . . . . . V. 11, p. 325

13. Certiorari does not lie where the petitioner has suffered no material injury. In the absence of an appeal the decision of the local officers is final. . . . . V. 11, p. 265

14. Where a party fails to appeal within the time allowed, he cannot thereafter appeal from the Commissioner's refusal to review such decision. The proceedings by certiorari are not intended to cover cases where the right of appeal is lost by inexcusable negligence . . . . . V. 11, p. 238

15. The Secretary may authorize an appeal from the local officers, or from the Commissioner, after the time therefor has expired. V. 11, p. 50

16. Appeals cannot be taken from decisions upon interlocutory motions. Such appeals should not be transmitted to the General Land Office, but the case should be proceeded with, and decision rendered, when the aggrieved party may appeal . . . . . V. 11, p. 161

17. An appeal does not lie from the Commissioner's action in reviewing a case or in sending it back to the local office for a completion of the record in due course of proceeding. The Commissioner may review or reverse his decision without notice to either party. V. 11, p. 161

18. The proper proceeding to test the question raised by an appeal, in case of a subsequent application to enter land upon which is already a subsisting entry, is by contest *amicus curiæ* to show the illegality of the prior entry. Such a contest might be allowed, when. V. 11, p. 99

19. The Surveyor-General, having reached a conclusion as to the proper party to whom the patent must be delivered, should have allowed time for appeal. As he delivered the patent and no serious injury has resulted therefrom, the Department declines to interfere, and suggests judicial proceedings. V. 11, p. 12

Contest, 43; Practice, 22, 24; Timber culture, 25.

Application to Enter.

1. As L. C. Dayton, the first contestant, filed the first application to enter, he is awarded the land . . . . . V. 11, p. 202

2. To secure preference right of entry, a contestant against a timber culture entry must file his application to enter the land under the homestead or timber culture law. V. 11, p. 87

3. After contest was decided in contestant's favor by the local officers, and no appeal taken, the contest was dismissed on the ground that no application to enter had been filed at date of initiating contest. In view of the filing of his application prior to notice of dismissal, and that no adverse interest has intervened, he is allowed to begin new contest, dating from such application. V. 11, p. 184

4. Notwithstanding contestant did not file his application to enter the land until after the hearing, he is allowed to proceed with a new contest, dating his right from the time he filed his application to enter, subject to any intervening adverse rights . . . . . V. 11, p. 99

5. It is not necessary at the time of initiating contest against a homestead entry to make application to enter the tract. V. 11, pp. 72, 258

6. If Griffis was entitled to proceed with a new contest from date of his application to enter, such right could avail him nothing in the presence of the intervening adverse right of Wilson, now of record . . . V. 11, p. 344

7. In view of certain departmental decisions, the contest is held effective, as Livingston filed his application to enter at date of hearing . . . . . V. 11, p. 226

8. Where an applicant offers to file an application to enter, it is equivalent to filing one. The contestant, having proved his allegations, is allowed the preference right. V. 11, p. 200

9. In this case no application to enter was filed at the date of contest, because of the well-known practice of the local officers refusing such applications. . . . . V. 11, p. 200

Contest, 20, 44; Mines, 17; Practice, 19, 20; State Selection, 1; Timber Culture, 24.

Appropriations.

V. 11, pp. 63, 111, 142, 143, 382, 383

Arkansas.
Donating Fort Smith in . . . V. 11, p. 76
Relating to Iron Mountain Railroad. V. 11, p. 172
Indians, 1; Townsite, 12.

Arsenal Island.
Surveys, 3, 4.

Assignment.
Desert land, 15, 19; Scrip.

Attorneys.
1. Notice to attorney is notice to principal. An attorney's relation to a case does not cease while anything remains to be done of which the parties litigant should have notice, unless a special contract brought to the attention of the land department limits such relations to particular acts . . . . . V. 11, p. 354
2. Newspapers wherein final proof notices shall appear cannot be selected by claimants or their attorneys . . . . . V. 11, p. 247
3. As to testimony of witnesses and claimants when taken before attorneys acting in the case . . . . . V. 11, p. 98
4. In absence of any provision in the local law or in the rules of practice, forbidding the attorney in a case from acting as a notary public in the preparation of an affidavit for his client, there is no reason for declaring a contest illegal because based upon such affidavit. Testimony in a case should not be taken before a notary public who is the attorney of record . . . . . V. 11, p. 116
5. Except in Dakota and in other states and territories whose laws will not permit an attorney, who is a notary, may act professionally and officially at the same time. As the Colorado Statutes are not known to be similar to those of Dakota in this particular, the action requested in this case is denied. . V. 11, p. 82
6. Testimony should not be taken before a magistrate who is also attorney in the case. This ruling is suspended, and arguments may be filed touching this question . V. 11, p. 130
7. A power of attorney given to an attorney while disbarred may be used after his re-instatement. Such attorney cannot substitute another attorney, unless his power contains a provision to that effect, or the substitution is ratified by the principal . . . . V. 11, p. 21
8. Third parties cannot interject themselves into a case and require the land department to adjudicate matters purely personal to themselves. The attorneys in this case contended for delivery of patent, which they desired to to hold as security for their fees. V. 11, pp. 127
9. The building or rooms owned or leased by the government are for public purposes exclusively, and cannot be used by attorneys as private offices. . . . . V. 11, p. 226
10. The examination of a township plat by an attorney should not be refused by the local officers . . . . . V. 11, p. 294
Affidavit, 3, 4; Appeal, 6; Clerk, 1; Coal lands, 1; Contest, 26; Homestead, 83, 84, 87, 88, 90; Pre-emption, 11; Timber culture, 14.

Board of Adjudication.
Final proof, 5; Homestead, 41, 42, 72; Pre-emption, 4, 72.

Breaking.—*See Timber Culture.*

Burden of Proof.
Contest, 30, 31; Timber land, 6.

California.
Relative to University of . . V. 11, p. 151
Relative to Rancho de Napa. V. 11, p. 127
Indians, 10; Private entry, 2; Pueblo lands —School lands, 3; State selections, 1, 10, 11.

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Part relinquishment of. . . . V. 11, p. 380

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Certiorari.
Appeal, 9, 13, 14; Mines, 26; Practice, 7, 27.

Cherokee Lands. . . . V. 11, pp. 105, 347

Chippewa Reservation. . . . V. 11, p. 158
Scrip. . . . . V. 11, p. 282

Circular Instructions.—Arranged by subjects, and dates thereunder.

DESERT LANDS.

June 13, 1884. Entry cannot be made of reclaimed lands . . . . . V. 11, p. 118
December 1, 1884. How final proof may be taken . . . . . V. 11, p. 303
December 10, 1884. Witnesses must appear in person before local officers. V. 11, p. 316

HOMESTEADS.

August 23, 1884. Indians located on public lands . . . . . V. 11, p. 217

MINES AND MINERALS.

December 4, 1884. Survey, application for patent and proofs. . . . V. 11, p. 296

PRACTICE.

May 8, 1884. Hearings ordered upon special agents' reports . . . . . V. 11, p. 84
June 12, 1884. Remittances for copies. V. 11, p. 98
August 6, 1884. Suspension of certain hearings . . . . . V. 11, p. 161
August 29, 1884. Published notices of right of appeal . . . . . V. 11, p. 178
September 20, 1884. Contests against suspended entries. . . . . V. 11, p. 211
October 3, 1884. Reducing testimony to writing in towns where land offices are located. . . . . V. 11, p. 210
October 11, 1884. Registration fees. V. 11, p. 227
Nov. 20, 1884. Notations on township plats . . . . . V. 11, p. 276
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SURVEYS.

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March 10, 1884. Fees or commissions to be returned . . . . . V. 11, p. 35
May 21, 1884. Dodge scrip . V. 11, p. 88
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Sept. 3, 1884. Official mail matter. V. 11, p. 195
Sept. 10, 1884. Registration fees. V. 11, p. 195

Sept. 17, 1884. Telegrams from subordinate officers . . . . . V. 11, p. 195
Sept. 24, 1884. Schedule of telegram rates. V. 11, p. 222
Dec. 1, 1884. Deposits of public moneys. V. 11, p. 306
January 2, 1885. Decisions relating to public lands. . . . . V. 11, p. 330

Chilili, Town of.

1. A survey made under instructions given upon an erroneous translation of original title papers, etc., ordered to be corrected. V. 11, p. 268

Citizenship.

Satisfactory evidence of . . . V. 11, p. 356
Pre-emption, 4; Timber culture, 6.

Clerk Hire . . . . . V. 11, pp. 130, 194

Clerk of Court.

Desert lands, 9; Final proof, 9; Homestead, 62; Mines, 36; Montana.

Coal Lands.

1. Although the coal declaratory statement and affidavit required at time of purchase were made before an attorney, the same is allowed (there being no adverse filing) notwithstanding regulations of July 31, 1882, to the contrary . . . . . V 11, p. 102

2. Coal lands can be entered only by legal subdivisions. Hence on a hearing to determine the character of a 40-acre tract, the testimony must show that the tract, as a whole, is more valuable for coal or for agricultural purposes, stock-raising, hay, etc. A 10-acre tract valuable for coal cannot be segregated. V. 11, p. 214

Colorado.

Act relating to Ute Indians in. V. 11, p. 77
Lands in lieu of mineral school sections. V. 11, p. 29
Titles in Fort Lyon reservation confirmed. V. 11, p. 142
Attorney, 5; Indians, 9; Mines, 6.

Commutation.—*See Homestead.*

Abandonment, 2; Adjoining Farm Entry, 1; Affidavit, ; Appeal, ; Application, ; Coal land, 2; Farm entry, 1; Final proof, 10; Fraud, 4, 5, 8, 9, 10; Homesteads, 26, 27, 28, 30, 65; Indians, 6; Mines, 1, 2, 23; Notice, 3, 15; Practice, 24, 26; Preemption, 47, 69; Preference right, ; Relinquishment, 2, 5; Timber culture, 17, 21, 25; Townsite, 5.

Contest.

1. Caution is suggested against collusive contests by relatives or others. The application of Moses to contest is suspended until the result in Brown *vs.* Brown can be determined; when, if the defendant is successful, Moses may proceed to contest. . V. 11, p. 19

2. Speculative contests—how treated. V. 11, p. 194

3. The circular of December 22, 1882, was designed to prevent a multiplicity of contests for speculative purposes, and should not be construed to prevent a *bona fide* contestant from dismissing one contest and commencing another . . . . . V. 11, p. 49

4. Local officers should examine carefully and point out errors in applications to contest, and allow amendments thereto . V. 11, p. 19

5. The initiation of contest in this case was not premature, and is therefore valid. V. 11, p. 50

6. As the irregularities in this contest were the fault of the Register, contestant is allowed the preference right . . . . . V. 11, p. 236

7. The plaintiff having instituted a valid contest, could lose no rights thereunder through the neglect of the local officers to perform their duties correctly . . . . V. 11, p. 164

8. Local officers must comply with circulars heretofore issued as to hearings and fees. V. 11, p. 259

9. The local land officers are authorized to order hearings, on application, in case of conflicting clains to the same land. V. 11, p. 339

10. Where the failure of a would-be contestant to give the name of the entryman and number of entry is the result of wrong information from a clerk in the local land office, his rights should not be prejudiced thereby. V. 11, p. 201

11. Under the circumstances stated, it was proper for the local officers to decline to set a day for the hearing ordered by the Commissioner . . . . . V. 11, p. 232

12. The entry had been extinguished by operation of law, so that when the would-be contestant applied, there was no foundation for a contest . . . . . V. 11, p. 163

13. Instructions in cases of simultaneous applications to contest . . . . V. 11, p. 114

14. How an adverse claimant against a homesteader or pre-emptioner can protect his rights . . . . . V. 11, p. 291

15. Notwithstanding defects in the contest, it will not be dismissed in view of the facts stated . . . . . V. 11, p. 195

16. In view of the good faith and causes of failure shown, the contest in this case is dismissed . . . . . V. 11, p. 149

17. Where a party applies to contest for 40 acres in a pre-emption claim of 160 acres, another party, to secure preference right, may immediately initiate contest against the remaining 120 acres. The allegation being non-compliance with the pre-emption laws, the second contest is not estopped by the pre-emptor's final proof and entry V. 11, p. 232

18. The rights of a contestant should be protected when acting under the authority of the Circular of July 1, 1879, providing that an entry on land in possession of a *bona fide* settler was invalid, and which was in force at the date of his initiation of contest. V. 11, p. 53

19. A new hearing is ordered in this case, in view of good faith and the long occupancy of the land by the claimant, notwithstanding non-compliance with law and the Rules of Practice . . . . . V. 11, p, 232

20. Dayton's contest was illegal, and proceedings based thereon were without effect. As Mrs. Nell failed to apply for more than three months after her settlement became effective, her application is rejected. Land is open from date of relinquishment of prior entry, not from date of cancellation of said entry. V. 11, p. 306

21. It is contrary to the law and practice to

permit the dismissal of a contest regularly initiated, merely on the motion of a stranger to the record, without notice to the contestant, and prior to hearing. . . . . V. 11, p. 66

22. Where contestant dies, as his right is a personal one, it leaves the case between the government and the entryman. And in this case, as the party has subsequently complied with the law and shown good faith, his entry may stand . . . . . V. 11, p. 131

23. Contests are originated for the immediate personal benefit of the contestant, so far as the motive of the contestant is concerned. The application of a stranger for the purpose of questioning the motive that prompted a contest, would not form a proper basis for investigation . . . . . V. 11, p. 49

24. The contest by Jones, and the timber culture entry by Malsbary were for their joint benefit. Preference right is denied Jones, and Malsbary's entry is ordered cancelled, and the tract involved will be disposed of to the first legal applicant . . . . V. 11, p. 313

25. Hearings must be fixed at the earliest practicable moment, and no more cases ordered before any officer than can be properly attended to and completed at the time. . . V. 11, p. 210

26. Notwithstanding the local custom of giving notice of motion to dismiss, the default of contestant and her attorney at the time set for hearing, is held, under the circumstances, fatal to her case . . . . . V. 11, p. 237

27. In view of the circumstances and misrepresentations, a hearing is ordered to elicit the facts. . . . . V. 11, p. 3

28. A homestead applicant may institute contest to prove the agricultural character of the land, as well as to show the propriety of his own claim . . . . . V. 11, p. 124

29. Where a contest was dismissed which would have been sustained if all the facts had been before the department at the time, and the error was subsequently corrected on review, the fact that the application for reconsideration was not made within thirty days, as required by the Rules of Practice, was not material . . . . . V. 11, p. 164

30. The burden of proof in proceedings involving forfeiture is always upon the party alleging non-compliance with legal requirements. If he fails to establish his allegations, the proceeding necessarily fails . V. 11, p. 239

31. The burden of proof is upon the party alleging want of compliance, and the acts of abandonment and failure to comply with the legal requirements must be affirmatively shown . . . . . V. 11 p. 199

32. As notice of contest was not properly given, and no affidavits were presented in support of motion for continuance to secure notice, the contest was dismissed. . . V. 11, p. 252

~~Contest. . . . . V. 11, pp. 32, 33, 34, 35~~

~~Practice . . . . . V. 11, p. 1~~

33. A continuance is a matter within the discretion of the local officers, not a right or privilege to be granted for the asking. The reputation of a party for truth and veracity is not to be taken into consideration on his motion for a continuance. . . . . V. 11, p. 307

34. Where testimony irrelevant and improper under the complaint is introduced at a hearing, a motion to strike it out, or a continuance to secure evidence in rebuttal, should be granted. . . . . V. 11, p. 307

35. All applications for continuance should be made in writing, and will only be allowed where good cause is shown. . . V. 11, p. 66

36. In view of the liberal practice of courts in allowing amendments, the contest of Hunter is held to have been initiated by an affidavit defective in several respects, afterwards corrected and amended . . . . . V. 11, p. 113

37. Contests for forfeiture require full and clear proof of all allegations set up. V. 11, p. 230

38. The testimony of witnesses who do not see the claimant on his land for the time specified, and who therefore conclude he was not there, is not satisfactory proof . V. 11, p. 230

39. When a relinquishment is filed as the result of a contest, no further evidece in the contestant's behalf is needed . . V. 11, p. 116

40. The contestant who shows that the entryman had exhausted his right by a prior entry, is entitled to preference right. V. 11, p. 264

41. At a hearing the testimony must be in accordance with the complaint. After the hearing is closed and testimony submitted, the complaint cannot be amended as proposed . . . . . V. 11, p. 293

42. How far re-direct and re cross examination of witnesses in contest cases may be carried. The local officers must exercise a sound discretion . . . . . V. 11, p. 2

43. When there is no appeal, the protest testimony should be transmitted in a separate letter, and not with the entry papers. V. 11, p. 213

44. An application to enter, rejected by the local officers, not put in evidence at a contest, cannot after such contest is decided be presented as newly-discovered evidence on which to base a reconsideration . V. 11, p. 131

45. Where testimony in contested cases is taken before another officer than the Register and Receiver, the parties should not be required to appear at the local office at the time set for examining the testimony—additional evidence should not be received at such time. V. 11, p. 226

46. It was improper to swear the witnesses prior to giving their testimony; signatures by agreement of parties, were attached to the shorthand notes . . . . . V. 11, p. 293

47. The defendant is not obliged to introduce any testimony in defence—he may rely on the insufficiency of evidence introduced by the plaintiff . . . . . V. 11, p. 307

48. Instructions as to writing out testimony by regular clerks and signatures thereto. V. 11, p. 210

49. The contestant fails to show superior settlement and improvements . . V. 11, p. 167

Continuance.

Contest, 32, 33, 34, 35; Homestead, 58; Practice, 1.

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Cost of . . . . . V. 11, pp. 114, 338, 370
Contest, 42; Pre emption, 48.

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Cultivation.
Desert lands, 6, 7; Homestead, 34, 38, 52, 53, 54, 55, 56; Pre-emption, 52; Timber culture, 35, 36, 37, 38, 39, 40, 41.

Dakota.
Affidavit, 2; Attorney, 5; Practice, 3; Survey, 7.

Declaratory Statement. — *See Pre emptions.*
Homestead . . V. 11, p. 74, 75, 76, 81, 82

Deed.
Homestead, 67; Practice, 10; Pre emption, 3.

Deputy Surveyor.
Mines . . . . . ~~V. 11, p.~~ 13

Desert Lands.
1. Desert land entry cannot be made of lands reclaimed before entry . . V. 11, p. 118
2. Settlement made upon land while it is in a state of reservation is of no effect. Under the desert land laws no rights are acquired by reason of settlement and improvements until the application is filed . . . . V. 11. p. 221
3. Tracts entered under desert land law are desert until their *non-desert* character can be established by a preponderance of testimony. V. 11. p. 59
4. There is no law especially authorizing the survey of desert lands. Should there be settlers in the same township, a survey may be made on deposit of a sum sufficient to defray the cost of such survey . . . . V. 11, p. 330
5. Settlers under the pre-emption laws before survey are protected for three months from the filing of the plat, within which time they may place their claims of record; and as desert land entries may be made on unsurveyed land, the settler's D. S. is allowed to stand until either party offers final proof. V. 11, p. 238
6. Where desert land claimants actually live upon and cultivate the land included in their desert land claims, they are settlers, and may apply for surveys under the deposit system. V. 11, p. 346
7. No crop has been cultivated at any time, but the land has been used for pasturage. Final entry was made June 15, 1880. Affidavit of contest filed Oct. 8, 1882. Hearing had in March, 1883. Considerable ditching was done just before the hearing. Held that the entry should not be disturbed. V. 11, p. 135
8. The desert land act requires final proofs to be made in person before the Register and Receiver . . . . . V. 11, p. 265
9. The final deposition of claimant may be taken before the clerk of any court of record, or a United States Commissioner, but the witnesses must appear in person before the Register and Receiver . V. 11, pp. 303, 316
10. There is no authority for extension of time in making final proof in desert land entries. Parties who delay beyond the legal period are liable to contests for non-compliance.. . . . . V. 11, p. 136
11. Final proof should show that one or more laterals have been constructed, and of sufficient capacity, and located so as to irrigate the land claimed. It is not necessary that the small ditches on the land for distribution of water be constructed prior to final entry. V. 11, p. 371
12. As the entryman was allowed to enter irregular tracts without objection, and has spent much in reclaiming them, it would work hardship and injustice to enforce against him the regulation referred to. . . V. 11. p. 45
13. Desert land entries are not assignable. Entries held for cancellation for non-compliance with law . . . . . V. 11, p. 221
14. Where three desert land entries, aggregating 1760 acres, were assigned on the same day, they were made to a third party, and the evidence shows that they were really made for the benefit of the assignee, the entries are held to be illegal, because in violation of the

provision of the law which restricts one person to an entry of 640 acres. The entries are held to be fraudulent . . . . . V. 11, p. 118

15. An assignment, even if valid in itself, could not give validity to an illegal or fraudulent entry, especially where the assignee participated in the fraud. . . . V. 11, p. 119

16. The claim of equities is denied in view of the want of compliance with the law. Expenditure of money on the land involved in a desert land entry after the expiration of the three years allowed for reclamation, can afford ground for no such claim . . V. 11, p. 119

17. Fraud usually appears, not from direct testimony, but from the attendant circumstances . . . . . V. 11, p. 119

18. The case of a desert land entryman who fails to comply with the law is not similar to that of a pre-emptor who, having settled upon and improved the land, is allowed to file to prevent forfeiture of his claim . V. 11, p. 119

19. Assignments of desert land entries made prior to April 15, 1880, will be recognized, but not to invest in the assignee title to more than 640 acres. Final proof in case of assignment can be made by the assignee, but patent will issue in the name of the entryman. V. 11, p. 281

20. Desert land entries are included in the act of May 14, 1880, and as pre-emptions may be held subject to the Rules of Practice in the matter of hearings and contests. V. 11, p. 172

21. Notwithstanding Ringgold's application to contest, at date of relinquishment of the desert land entry, a division of the land is awarded in view of the equal settlement at the time of cancellation of the said entry. V. 11, p. 172

Detroit, Michigan.
Relative to . . . . . V. 11, p. 80

Devisee.
Homestead, 10, 64, 68.

Devoid of Timber.
Timber culture, 27, 28, 29.

Dodge Scrip . . . . . V. 11, pp. 76, 88

Donations.
V. 11, pp. 45, 91, 254, 270, 279, 286, 320

Double Minimum Lands.
In view of the language of the withdrawal which raised the land under consideration to double minimum price, the claimant must pay $1.25 an acre in addition to his payment at $1.25 an acre . . . . . V. 11, p. 186
Indians, 11.

Entry.—*See Fraud.*

1. By firm or corporation . . V. 11, p. 370

2. Entries allowed by local officers after instructions to suspend action on the tracts involved should be canceled. . V. 11, p. 294

3. The entry should be canceled, as not having been made with a view to appropriate the land to his own use, but for speculative purposes . . . . . V. 11, p. 26

4. Where rights are technically defective from failure to make a record claim in time, they will not be defeated by speculative entries. . . . . V. 11, p. 236

5. Where a conflict involves only part of the land embraced in an entry, it is error to cancel the entire entry because of such conflict. V. 11, p. 127

6. It is the duty of local officers to entertain objections to cash entries . . . V. 11, p. 338

7. An entry which is illegal and void has no legal effect and is no bar to a legal appropriation or entry of the same land, or at least an incipient appropriation thereof . V. 11, p. 259

8. In view of the evidence of good faith and the improvements made, entry by McDonald is authorized . . . . . V. 11, p. 23

9. The contestant's settlement and residence were not satisfactory. Had his settlement been satisfactory, the fact that he was not residing upon the land at the date of relinquishment of prior entry covering the tract would have given him no rights . . . V. 10, p. 293

Evidence.—*See Testimony.*

Executive Orders.—*See Public Notices.*

March 29, 1884. Dakota Indian lands. V. 11, p. 29

May 14, 1884. Jicarilla Apache Indians reservation. . . . . V. 11, p. 93

July 12, 1884. Chilocco Indian Industrial school . . . . . V. 11, p. 141

July 22, 1884. Abandoned and useless military reservations . . . . . V. 11, p. 159

November 26, 1884. Reservation for the Northern Cheyenne Indians . . V. 11, p. 304

Feb. 9, 1885. Niobrara or Santee Sioux reservation . . . . . V. 11, p. 367

Feb. 27, 1885. Winnebago and Sioux or Crow Creek reservation . . . V. 11, p. 367

March 3, 1885. Zuni reservation. V. 11, p. 380

Fee . . . . V. 11, pp. 67, 130, 226, 259, 358

Fencing.

1. Under the Atherton-Fowler decision, fencing is necessary to protect improvements. V. 11, p. 216

2. To protect a settler's possession fencing is not necessary . . . . . V. 11, p. 166

3. Is necessary to protect possession. V. 11, p. 52

4. It is illegal to fence a large tract of public land and attempt to exclude settlers therefrom . . . . . V. 11, p. 52
Homestead, 12; Pre-emption, 19, 51.

Filing.—*See Pre-emption.*

Final Proof.

1. Proofs presented without tender of payment must be rejected . . . . V. 11, p. 259

2. In cases where protest is filed before or on the day of making final proof, local officers will follow the instructions laid down in Marquardt *vs.* Olson, and proceed to hear the testimony adverse to the proof on the day such proof is submitted . . . . . V. 11, p. 339

3. Where protest is filed after proof is submitted, the papers relating to same should be transmitted to the General Land Office without further action by the local officers. V. 11, p. 339

4. Instructions as to final proofs. V. 11, p. 346

5. Final proofs submitted for confirmation. V. 11, p. 35

6. How a party, not of record, may proceed to defeat a homestead claimant who has not complied with the law . . . . V. 11, p. 249

7. Upon a protest against final proof, any testimony showing a better right in the adverse claimant is competent, whether based upon the allegations contained in the protest or not. . . . . V. 11, p. 98

8. As to the duty of local officers in relation to final proofs . . . . . V. 11, p. 34

9. The pre-emption proof being *ex parte*, should be accepted, and no cases will be suspended for the reason that the proof and affidavit are made before a clerk of court who is attorney in the case, the action of the clerk being merely a clerical one prescribed by law. The order of July 12, 1884, does not apply to cases like the one under consideration. V. 11, p. 196

10. Parties who do not appear at the time and place specified in the published notice of intention to make final proof cannot be allowed thereafter to contest the entry on the ground of abandonment or failure to cultivate and improve the land . . . . . V. 11, p. 213

11. Where pre-emption and homestead final proof is taken on a day other than the day advertised, a special report giving the facts stated herein should be forwarded with the papers in the case . . . . . V. 11, p. 370

12. Where final proof is advertised to be made, all adverse claimants should be specially cited in the published notice. V. 11, p. 276

13. Publication of final proof notices. V. 11, p. 146

14. As notice was not published in the newspaper designated by the Register, the final proof is rejected . . . . . V. 11, p. 353

15. All publication notices must be in the *newspaper proper*, and not in a supplement form. . . . . V. 11, p. 247

16. The published notice invites all parties to show cause, if any, why an entry should not be allowed, and any testimony showing a better right in another should be considered. V. 11, p. 98

17. An error in the description of the land involved in the published notice of intention to make final proof is material, especially when certain irregularities, as in this case, are added. V. 11, p. 340

Contest, 17; Desert Land, 8, 9, 10, 11, 19; Homestead, 57, 58, 59, 60, 61; Fraud, 1; Pre-emption, 58, 59, 61; School lands, 2; Timber culture, 42, 43, 45, 46, 47.

Forfeiture.

Contest, 30, 37; Homestead, 65; Railroad, 23.

Forestry.

Appropriation for investigation. V. 11, p. 111

Fort Brooke Military Reservation. V. 11, p. 90

Fort Hays Reservation . . . V. 11, p. 111

Fort Lyon Reservation. . . V. 11, p. 142

Fort Smith . . . . . V. 11, p. 76

Fort Thorn Reservation . . . V. 11, p. 12

Fraud.

1. Local officers must reject proof and application papers if fraud is suspected. V. 11, p. 275

2. A rehearing is ordered in view of alleged fraud in Brown's entry . . . . V. 11, p. 149

3. Belief unsupported by proof can have no weight, as fraud, like any other fact, must be proved. The compromise in this case was an agreement upon which both parties acted, each withdrawing his filing for the whole tract, and each filing for one half thereof. This agreement cannot be disturbed, because one party was induced to enter into it by misrepresentations which the other did not procure, and in which he did not participate. V. 11, p. 44

4. Pending proceedings in court for fraud, contests against suspended entries will not be permitted . . . . . V. 11, p. 83

5. Where one attacks an existing patent on allegations of fraud, with the purpose of himself entering on vacation of the patent, and a hearing is ordered to ascertain the facts, he should make a full *prima facie* showing at his own expense . . . . . V. 11, p. 3

6. If the party attacked desires to rebut such *prima facie* showing, he should submit his testimony at his own expense . . V. 11. p. 3

7. As the charge of fraud cannot be sustained against the entries in question, patent should issue in view of the act of June 15, 1880. on their cash entries made prior to approval of this act of Congress . V. 11. p. 147

8. Notwithstanding proceeding already had, a hearing is ordered on the allegations of fraud presented . . . . . V. 11, p. 149

9. Where a party selects as ground of contest the fraudulent inception of another's entry instead of his own application to enter, he must abide the results of such choice: he cannot be allowed another hearing on ground of his application to enter. . . V. 11, p. 131

10. In view of the allegations of fraud, a rehearing is allowed, and Joseph Schmucker is allowed to intervene to show his paramount right to the land . . . . . V. 11, p. 184

Entry cancelled because of . V. 11, p. 195

Desert lands, 15, 17; Homesteads, 19, 86, 89; Pre-emption, 64, 67, 68, 69, 70; Private entry, 6; Repayment, 3; Scrip, 7; Swamp land, 12; Timber culture, 5.

French Grants.—*See Private Land Claim.*

Gerard Warrant.

These warrants are not locatable on "lands reserved from sale or other disposal by the government." . . . . . V. 11, p. 157

Gesner, Alonzo.

Relief of . . . . . V. 11, p. 143

Good Faith.

The evidence shows good faith on the part of entryman . . . . . V. 11, p. 168

Contest, 19, 22; Entry, 8; Homestead, 6, 28, 29, 32, 38, 39, 43.

Grasshoppers.

Homestead, 16.

Grazing.

Homestead, 55.

Guano.

1. Act in relation to. . . . . V. 11, p. 62

2. Lands containing deposits of bat guano may be entered under any laws relative to the disposal of agricultural public lands. V. 11, p. 157

Guardian.

Homestead, 80, 83.

Hays, Millie E.
Relief of . . . . . V. 11, p. 63
Hearing.
Several defects in proceedings. V. 11, p. 253
Affidavit, 13; Appeal, ; Contests, .
Heirs.
Homestead, 56; Pre-emption, 45, 46; Relinquishment, 1; Widow, .
Homesteads.
1. A homestead entryman may set up an earlier settlement than that specified in his application . . . . . V. 11, p. 165
2. Although a homestead entry may be allowed by the Register and Receiver, such entry is held to be permitted by the "Land Department" within the meaning of the law. V. 11, p. 237
3. In view of the evidence, McCready's homestead entry is allowed to stand. V. 11, p. 179
4. Arranging in the form of a square poles left by a former settler, and calling it a house foundation, is not an act of settlement, especially when not followed by other acts of settlement and residence . . . . V. 11, p. 370
5. In view of the evidences of error, and the fact of prior settlement, the land is awarded to Brown . . . . . V. 11, p. 355
6. No settlement right can attach to land covered by a homestead entry. In view of the facts and the good faith of Mrs. Lewis, she is allowed to make entry without subjecting it to adverse rights. . . . . V. 11, p. 262
7. Rights under the timber culture law are initiated by entry and not by settlement. V. 11, p. 20
8. A legal application withdraws the land from any other disposition until finally acted upon; and pending the determination of the question raised by the application, no adverse rights can be acquired by settlement upon the land involved . . . . . V. 11, p. 20
9. The clandestinely made settlement of the defendant and his residence in the house of a *bona fide* prior resident on the land maintained by fraud and misrepresentation as long as they would avail, and afterwards by physical force and violence, are not the settlement and residence contemplated by the homestead laws . . . . . V. 11, p. 261
10. As Winters, a single man, and qualified settler, made formal application before his death to homestead the land in contest, he was competent to devise his right. V. 11, p. 114
11. The tracts in question were withdrawn from market at the time the homestead entry was made . . . . . V. 11, p. 30
12. Where a party wholly encloses a quarter section for the purpose of deceiving would-be settlers, such enclosure is no bar to a homestead entry by another party. V. 11, p. 239
13. The act of July 27, 1866, by the words "occupied by homestead settlers," meant parties who were actually upon the land, though unsurveyed, who intended to enter it under the homestead laws as soon as surveyed. V. 11, p. 218
14. The Land Department will not lend its power to the accomplishment of an effort to defeat an honest settler's rights, on mere speculative and technical grounds . V. 11, p. 103
15. Where land is entered as a homestead, its status at date of entry must be regarded, and not what it was prior thereto. The fact that a mining camp, with several cabins, hotel and post-office, once existed thereon, is no bar to the entry of land by a homestead claimant when only two other persons than himself remain at date of entry . . . . . V. 11, p. 133
16. A homestead claimant who relinquished his homestead in Kansas on account of grasshopper ravages, exhausts his right of homestead, and cannot make a second entry in another State . . . . . V. 11, p. 85
17. Preference right may be acquired under Acts of March 3, 1879, and May 14, 1880, by reason of holding a possessory right to a quarter-section prior to its survey, and prior to any superior claim to the tract, notwithstanding under the homestead law of 1862 he could claim but eighty acres. . . . . V. 11, p. 85
18. A homestead entry of a tract of land within railroad withdrawal limits which had been covered at date of restoration to market of vacant lands within said limits by a former homestead entry, and was not therefore included in the list of lands actually restored, such tract was confirmed by the act of April 21, 1876, the land being regarded as restored and properly subject to homestead entry. V. 11, p. 237
19. Where an entry would not have been allowed but for the fraud and imposition practiced, it is immaterial whether the party complied with the law after entry or not. V. 11, p. 327
20. A pending application to amend a homestead entry reserves the land embraced by it from any other appropriation, until the application is disposed of . . . V. 11, p. 228
21. When a party makes an entry of land without any knowledge of its character, he must suffer the consequences. . V. 11, p. 278
22. In view of the allegations, Stanley is allowed to make a second homestead entry on another tract . . . . . V. 11, p. 262
23. In view of the peculiar evidence submitted, the lost homestead right is not restored. V. 11, p. 278
24. In weighing testimony in contested land cases, reference must be had to the degree and condition in life of the entryman. V. 11, p. 215
25. In view of the evidence, the homestead entry is allowed to stand. . . . V. 11, p. 38
26. In homestead cases six months and one day must elapse before contest can be initiated. V. 11, p. 103
27. Contest against a homestead entry for abandonment cannot be initiated earlier than six months from date of entry. The act of May 14, 1880, cannot be construed to allow contest to be initiated at any time after expiration of six months from date of alleged settlement . . . . . V. 11, p. 296
28. The entry should be allowed to stand,

in case where a homestead claimant, who, having established a residence on a tract, went into service, the absence being necessary to obtain a livelihood . . V. 11, p. 71

29. In view of the improvements and apparent good faith of the claimant, and as the continuous residence of the family on the land was prevented by the wife's sickness, Herried's homestead entry is ordered reinstated. V. 11, p. 247

30. Homestead entry allowed to stand, notwithstanding the claimant failed to commence residence on the land prior to the initiation of contest, for good and sufficient reasons shown. V. 11, p. 103

31. Because a party votes in a different precinct from that in which his residence is situated, is not an invalidation of the fact of actual residence, nor does it destroy his property rights . . . . . V. 11, p. 105

32. Notwithstanding an absence of two years, the evidence forbids abandonment or want of good faith. There was residence for six months continuously prior to making final proof . . . . . V. 11, p. 7

33. The land is awarded to Driscoll because of Forbes' non-residence and want of improvements . . . . . V. 11, p. 309

34. Personal residence may be in a different place from legal residence. An official is not supposed to spend every minute, day or week at the place of his official business. In this case fifty acres were cultivated by a party who hired the privilege, and the homestead entry is sustained . . . . . V. 11, p. 52

35. The rule that homestead or pre-emption settlers, who are appointed or elected to office, are exempt, in certain cases, from continuing residence on the land, does not apply to their deputies . . . . . V. 11, p. 37

36. Where a claimant temporarily leaves his land for the purpose of earning an honest livelihood, coupled with a *bona fide* intention of complying with the law, such absence is accounted a constructive residence. V. 11, p. 71

37. Where failure to comply with the homestead law results from causes beyond the reasonable control of the claimant, his entry should not on that account be canceled. V. 11, p. 37

38. Notwithstanding non-residence, the homestead entry is allowed to stand, owing to good faith and cultivation shown by the claimant . . . . . V. 11, p. 72

39. Notwithstanding good faith may be shown, establishment of residence is required on homestead land. If a party was guided by a Land Office decision in not establishing residence, he is protected, if it be shown that a subsequent decision overruling the one on which he relied was unknown to him. V. 11, p. 5

40. Notice of decisions in such cases is a matter of fact, to be proved and not to be presumed. . . . . V. 11, p. 5

41. The evidence shows that claimant has not abandoned his homestead. As he has not complied with the law in the matter of residence, he will be allowed to do so, and his case will be submitted to the Board. V. 11, p. 248

42. Additional time is allowed the claimant in which to comply with the homestead law in the matter of residence, and his case will be submitted to the Board. V. 11, p. 248

43. Claimant after the abandonment, on receiving certain information, immediately returned to the land, resumed his improvements, and commenced his residence thereon as soon as he could erect his house. He appears to have acted in good faith, and there is no reason to believe he would have absented himself from the land except under misapprehension of its status . . . . . V. 11, p. 309

44. A county surveyor is not excused from continuous residence on his homestead claim. V. 11, p. 37

45. Homestead rights cannot be maintained to land through the occupation and possession of tenants . . . . . V. 11, p. 310

46. Because a party makes a pre-emption cash entry, and on the following day makes a homestead entry of an adjoining tract, does not excuse him from residing on the homestead tract . . . . . V. 11, p. 148

47. As claimant's residence and improvements are not satisfactory, his filing is canceled, and contestant's timber culture entry is allowed to stand . . . . . V. 11, p. 233

48. Homestead entry allowed within an abandoned military reservation, notwithstanding the party never actually resided on his claim . . . . . V. 11, p. 73

49. The evidence shows that Empey did did not go upon the land with the intention of making it his home. His plea of poverty is disregarded in view of purchases and building a hotel elsewhere . . . . . V. 11, p. 20

50. Unless facts are presented that amount to compulsory absence, actual residence is required under the homestead laws. V. 11, p. 20

51. Parties living and doing business in cities and towns cannot secure titles to public lands by occasional visits to their claims. The visits in this case aggregate little more than one month of actual residence in seven months from date of homestead entry—the entry having been made in October, and the proving up in May following, with settlement a short time prior to entry . . . V. 11, p. 72

52. Explanation of the words "residence or cultivation" in R. S., section 2291. V. 11, p. 229

53. Actual crops on homestead land are not necessary to its cultivation. Clearing half an acre of timber is sufficient, as in this case. V. 11, p. 147

54. Merely turning over the sod is not cultivation within the meaning of the homestead laws. Commuter in this case is allowed additional time in which to show the required cultivation . . . . . V. 11, p. 117

55. Where an administrator rents out for grazing purposes the land included in a deceased claimant's homestead entry, it is held that this is not cultivation thereof within the meaning of the law . . . . . V. 11, p. 239

56. In absence of proof to the contrary, heirs are presumed to exist. The possession of an administrator is, under the homestead law, possession of the heirs. Acts of cultivation and improvement performed by the administrator, after he has been appointed, are presumed to be for the benefit of the heirs. V. 11, p. 247

57. The contracts described herein, one of which was made to avoid litigation at the instance of the local officers, do not bar final proof . . . . . V. 11, p. 133

58. No other notice of a hearing is necessary at the time of making final proof, than the notice of intention to prove up. Continuances and postponements may be had. On showing good reason for non-appearance at date of presentation of final proof, a contest may be allowed after date of entry. V. 11, p. 228

59. Final proof made without the statutory publication of notice is illegal. It is also illegal when not made before a local land officer, officially, at the land office. V. 11, p. 310

60. Decision refusing to accept notice of intention to make proof because the same was signed "Jacob E. Greub, by J. D. Hinkle, his attorney," is sustained . . V. 11, p. 338.

61. In pre-emption and commuted homestead cases, the testimony of witnesses, in offering final proof, may be taken before any officer authorized to administer oaths; but under section 2292 and act of March 3, 1877, the testimony of witnesses must be taken before the officer before whom the claimant appears . . . . . V. 11, p. 98

62. Where there is more than one court of original jurisdisction in a county, the clerk of each court is authorized to take preliminary homestead affidavits under section 2294, R. S. V. 11, p. 38

63. Where the husband, after filing his D. S., became insane and died, his widow, as the head of the family, has a right to transmute the filing to a homestead entry. V. 11, p. 218

64. Under the homestead law, the widow of a deceased entryman stands first in the line of succession. But in considering her right to devise this homestead, other questions must be considered. A homestead party cannot, by will, defeat the rights of the children. V. 11, p. 249

65. Until government takes some action to enforce the forfeiture of a homestead entry, contest can properly be allowed, although brought after the expiration of seven years from date of entry . . . . . V. 11, p. 216

66. A homestead entry made on an even section prior to railroad withdrawal may be computed under the act of June 15, 1880, at $1.25 per acre. . . . . V. 11, p. 127

67. Where a homestead entryman attempted to transfer part of his land prior to June 15, 1880, the transferee may be allowed to purchase his part when the entryman applies to purchase, under the act of June 15, 1880. Where there is a discrepancy in a deed, the metes and bounds must govern rather than the quantity named . V. 11, p. 85

68. The devisee has the legal right of purchase under the act of June 15, 1880, as the transferee by will. Especially in view of the equities of this case, where the widow deserted the homestead claimant several years before his death, and his daughter, the devisee, is the actual head of the present family, and has occupied and improved the land since her father's death. . . . . V. 11, p. 115

69. The act of March 3, 1879, allowing additional homestead entries in certain cases, does not apply to pre-emptions. V. 11, p. 165

70. A party who entered 80 acres of land under the homestead laws, and received patent therefor, cannot relinquish his entry and make another one under the act of March 3, 1879 . . . . . V. 11, p. 4

71. One application to purchase under act of June 15, 1880, denied because conveyance relied upon was made prior to the homestead entry, and the second application denied because this law contemplates actual conveyances, and not contracts to convey. V. 11, p. 133

72. The act of June 15, 1880, applies only to transfers made prior to its passage. In view of the equity presented, the case will be submitted to the Board, under sec. 2457, R. S. V. 11, p. 330

73. The alleged agreement of sale in this case not being in writing, must be proved by the party alleging it. Such an agreement is not within the act of June 15, 1880. V. 11, p. 127

74. The contestant, a soldier who filed a, homestead declaratory statement before defendant's pre-emption settlement, did not settle until six months after homestead entry. As he did this on the advice and information of the local officers, and such was the practice at the time, his entry is allowed to stand, and defendant's claim is rejected. V. 11, p. 262

75. A soldier who filed a homestead declaration, has not six months' additional time after entry in which to commence residence and improvements . . . . . V. 11, p. 179

76. A homestead entry made by a soldier under the general circular of Oct. 1, 1880, before the expiration of six months from filing his declaratory statement, is not subject to contest for abandonment within three months from date of such entry, upon the allegations set forth in the affidavit of contest in this case. V. 11, p. 133

77. How a soldier's service is computed in homestead cases . . . . . V. 11, p. 279

78. A person now serving in the Army or Navy cannot make homestead entries if his duties would prevent him from complying with the law as to residence . . V. 11, p. 249

79. In view of the evidence, Wells' soldier's homestead entry is allowed to stand. V. 11, p. 181

80. Proceedings required in making homestead entries in behalf of minor orphan children of deceased soldiers . . . . V. 11, p. 38

81. The oath required by circular instructions of December 15, 1882, must accompany a soldier's filing . . . . . V. 11, p. 21

82. Until December 15, 1882, settlement and improvement within six months after soldier's declaratory filing were not required; while this ruling was in force, a claimant, who failed to so make settlement or improvement, was protected by it . . . V. 11, p. 306

83. The attorney for the widow of a deceased soldier does not succeed to the right of being recognized as attorney for the children, in case of the death or marriage of the widow, especially if the guardian of the children has constituted another person his agent. V. 11, p. 38

84. As certificate was not issued during the widow's life, her right was absolutely extinguished by death, notwithstanding any power of attorney she may have given, coupled with an interest or otherwise . . . . V. 11, p. 38

85. The inadvertent use of the same original entry in a certificate subsequently issued should not be held to invalidate a location upon a *prima facie* certificate . . V. 11, p. 85

86. In view of the fraud practised upon the soldier, a new certificate will be issued in his name, and the one under consideration canceled . . . . . V. 11, p. 166.

87. Where a soldier's claim is filed by certain attorneys, they will be recognized as the proper parties to receive the certificate on showing their authority . . . . V. 11, p. 127

88. A power to locate a soldiers' additional homestead certificate must be regarded as a power to receive the certificate. When an attorney induced his principal by deceit to execute a power of attorney authorizing the location of the certificate and sale of the land, it is ground for a revocation of the power. V. 11, p. 297

89. The rights of a party, who is entitled to make a soldier's additional homestead entry, should not be impaired merely upon a suspicion of forgery of his signature, without proof or allegation to that effect. V. 11. p. 166

90. Where a soldier's original homestead entry was canceled, and his attorney's acts can be construed as abandoning his application for an additional homestead certificate, a second attorney, who is given powers of attorney after the original entry is reinstated, should receive the certificate when issued for the additional homestead right. V. 11, p. 20

Adjoining Farm Entry, 2; Affidavit, 6, 8; Application, 2, 5; Attorney, 7; Contest; Indians, 12, 13; Pre-emptions, 21, 28; 30, 45, 57; Preference Right, 1; Railroad, 2, 12, 31; Timber Culture, 16, 17, 19, 41; Timber Lands, 14; Town-site, 8.

Houmas Grant.

The land involved is ordered to be reserved until further directed . . . . . V. 11, p. 45

Improvements.

Contest, 49; Homestead, 29, 43, 47, 82; Mines, 21, 33; Pre-emption, 50.

Indemnity.

Indians, 10; Railroads, 29, 30, 32, 33, 34, 35, 36, 37; School Lands, 2.

Indemnity Certificate.

Scrip, 9; Swamp Land, 2.

Indians and Indian Lands.

1. Cherokee lands, Arkansas. V. 11, p. 347

2. 2d proviso of 2d section of Act of Aug. 11, 1876, requires that the claimant must actually reside on the land at the time of completing his or her entry . . V. 11, p. 316

3. Sioux Santee or Niobrara Indian Reservation . . . . . V. 11, p. 373

4. Reservation for Indian industrial schools in county of Bernalillo, N. M. . V. 11, p. 239

5. A filing for Cherokee strip lands does not debar a claimant from filing under the general pre-emption laws . . . V. 11, p. 105

6. Lands within the old Chippewa Indian Reservation in Michigan, valuable mainly for pine timber, cannot be entered under the homestead laws. A hearing may be had to determine the relative values of these lands for agricultural or timber purposes. V. 11, p. 158

7. Payment by deposit in Sub-Treasury as described herein is held good under the special law involved . . . . . V. 11, p. 359

8. Lands within the limits of the Pipestone Indian Reservation in Minnesota are not subject to entry under the pre-emption laws. V. 11, p. 319

9. Cantonment on the Uncompahgre river, Colorado . . . . . V. 11, p. 330

10. Lands reserved for the use of Indians form a proper basis for indemnity school selections . . . . . V. 11, p. 375

11. The odd-numbered sections within the limits of the former Crow Reservation excluded from the grant to this company will be held as worth $2.50 per acre, or double minimum in price . . . . . V. 11, p. 203

12. Where the wife of a deceased Indian homesteader has resumed her tribal relations, and the seven years from date of entry have expired, the title in the case under consideration will go to the entryman's mother. V. 11, p. 250

13. How an Indian who has no tribal relations, or who belongs to some small band having no agent, may make a homestead entry under act of July 4, 1884 . . . V. 11, p. 347

Colorado, 1; Pre-emption, 38; Public Lands, 2; Swamp Lands, 2; Town-site, 7, 9, 10.

Iowa.

Sale of lots in Peru . . . . V. 11, p. 382

Iowa Indian Reservation . . V. 11, p. 38

Iron Mountain Railroad.

Act relative to. . . . . V. 11, p. 127

Jones, M. P.

Relief of. . . . . V. 11, p. 77

Kansas.

Sale of Fort Hays Reservation. V. 11, p. 111

Kirwin cemetery site. . . . V. 11, p. 381

Sale of Sac and Fox, and Iowa Indian Reservation in . . . . . V. 11, p. 381

Land Warrants.—*See Scrip.*

Laws of Congress (*in full*).

V. 11, p. 29, 62, 63, 76, 77, 93, 111, 112, 127, 142, 143, 159, 380, 381, 382, 383.

Louisiana.
Swamp land . . . . . V. 11, p. 3
Malheur Reservation . . . . V. 11, p. 359
Mexican Grants.—*See Private Land Claims.*
Michigan.
1. Relative to land in Detroit. V. 11, p. 380
2. To lease certain lands to the Board of Fish Commissioners . . . . . V. 11, p. 159
Indians, 6.
Military Bounty Land Warrant.
V. 11, pp. 175, 239
Military Reservation.
Disposal of useless . . . . V. 11, p. 142
Forts, ; Homesteads, 48.
Mill Site.
Mines, 9, 10, 19.
Mines and Minerals.
1. When there is any doubt whether a tract is more valuable for mineral than for agricultural purposes, a final award will not be made to the agricultural claimant; and a hearing will be ordered to determine the true character of the land . . . . . V. 11, p. 294
2. This circular, revoking mineral withdrawals, applied to general withdrawals only, and did not affect pending contests affecting particular tracts . . . . . V. 11, p. 7
3. Consideration of certain State selections involving mineral lands in Alabama. How settlers' claims thereon are affected.
V. 11, p. 276
4. Investigation of this case ordered. Unless fraud is shown in cases of lands entered prior to March 3, 1883, patents therefor cannot be withheld because of the provisions of the act of that date (22 Stat. 487).
V. 11, p. 35
5. This act conferred no rights on settlers except where entries had been made prior to its passage. "Inchoate rights" are not recognized . . . . . V. 11, p. 260
6. Mineral school sections in Colorado.
V. 11, p. 29
7. The form of a lode mining location need not necessarily be that of a parallelogram. The formation of the mineral deposit must govern . . . . . V. 11, p. 132
8. A location of surface ground which does not include any part of the lode claimed to have been discovered therein is invalid. Surface ground is an incident of the lode.
V. 11, p. 67
9. Two or more mill sites, aggregating not more than five acres, may be embraced in one application for patent . . . . V. 11, p. 102
10. A miner who has occupied a tract with valuable improvements as a mill-site, may enter the same with Porterfield scrip. The objection that the tract is not unappropriated land has no force where the entryman alone has valuable improvements on the land. Such a tract covered by mills and reduction works is not subject to entry by an agricultural claimant . . . . . V. 11, p. 326
11. A deposit of building stone may be entered as a placer mine . . . . V. 11, p. 213
12. Mineral entry allowed to stand notwithstanding purchase from a land officer, who has located the tract under the mining laws during his term of office as Receiver.
V. 11, p. 102
13. A deputy mineral surveyor may make mineral land entries, but in that event he cannot act in any other capacity than as claimant. A deputy mineral surveyor cannot survey a claim and act as notary public in the same case. . . . . V. 11, p. 261
14. The date of location of mining claims should be indicated on the approved plats of survey . . . . . V. 11, p. 146
15. Where a senior survey is the junior application, entry thereof should not be allowed in view of the conflict shown in a junior survey. The claimants under the junior application, but senior survey in this case, are allowed thirty days in which to commence proceedings in court . . . . . V. 11, p. 146
16. A tortious entry is unavailing for the purpose of a valid location of a mining claim. A relocator cannot avail himself of mineral in the public lands until the discoverer has in law abandoned his claim and left the property open for another to take up. No matter how derelict a claimant may have been, if he has returned and is working upon his claim, it is not subject to relocation. . V. 11, p. 307
17. An application for mining patent duly filed in the local land office should be treated as *prima facie* evidence of an appropriation of the premises described; but where an entry was prematurely allowed for disputed ground, while suit was pending, and the entryman subsequently recovered a judgment for the ground, the question regarding the regularity of the entry is one between the government and the entryman only . . . . . V. 11, p. 70
18. Where an application for patent is adversed, the applicant is at liberty to litigate with the adverse claimant, or relinquish the ground in conflict and take a patent for the remainder, or dismiss his application for patent and rely upon his possessory title.
V. 11, p. 67
19. The location notice and certificate of the mill-site in this case was signed by a certain party who is proved to be the agent of the owners of the mill-site. In view of the facts presented, and that no adverse claim on his behalf was filed, the title is held to be in the applicants for patent . . . V. 11, p. 277
20. The title being shown in applicant for patent, the entry is approved. . V. 11, p. 277
21. Additional $500 improvements must be shown on the part of this claim purchased from the successful adverse claimant. The $500 improvements belonging to the applicant are on the part of the claim not in controversy.
V. 11, p. 277
22. Where the owner of the original location fails to adverse the application for patent on the junior location, it must be assumed, under section 2325, R. S., that the claimant under the junior location is entitled to a patent as against the claims of the prior locator.
V. 11, p. 67
23. Where a special agent reports non-compliance with the mining law in the matter of expenditures, notice should be given the min-

ing claimants that a hearing will be had, and the special agent should be directed to produce witnesses to sustain his report.
V. 11, p. 34

24. As this claim for two lodes embracing 2524 feet, had its inception by location and application for survey long anterior to the promulgation of the rule contained in circular of June 9, 1883, restricting applications for mining patents to one lode, the case is allowed to proceed . . . . . V. 11, p. 296

25. Copy must be followed in published notices. Figures when from necessity changed to words must not increase the cost of publication. Newspapers that extort money by such changing of figures to words cannot be considered "reputable." . . . . . V. 11, p. 195

26. Because the appellate authority refuses to reverse the decision of the lower tribunal where a case comes up on certiorari at the request of protestants merely, assignments of error in such refusal are meaningless.
V. 11, p. 4

27. In view of the errors in the first patent, and the evidence to the effect that the resurvey covers the identical ground originally applied for, a new patent will be issued.
V. 11, p. 227

28. A location based upon a discovery made within the limits of another existing and valid location is illegal. The rule is otherwise where the first locators fail to comply with the law within the statutory period prior to the last location . . . . . V. 11, p. 67

29. Lands lawfully located and worked for mining purposes are as completely segregated from the body of the public lands as if a patent had issued for them . . . . . V. 11, p. 67

30. A party in possession is not compelled to purchase mining land from the government; and if he complies with the laws of possessory right, his title is as good for all practical purposes as if secured by patent.
V. 11, p. 99

31. When the purchase is completed, and the certificate issued, the purchaser at once acquires a vested right, of which he cannot be subsequently deprived, and the land ceases to be a part of the public domain. There is a part performance of the contract, which entitles the purchaser to a specific performance of the whole, without further action on his part . . . . . V. 11, p. 100

32. A right to a patent once vested, is equivalent to a patent issued. When patent issues, it relates back to the inception of the right of the patentee, so far as necessary to cut off intervening claimants . . V. 11, p. 100

33. The law requiring labor and improvements upon mining claims is inapplicable where the applicant has paid for and entered his claim . . . . . V. 11, p. 100

34. A lode claim application for patent may embrace two or more lode locations. But this ruling applies only to cases arising anterior to circular instructions of June 8, 1883.
V. 11, p. 100

35. After entry, the land department does not inquire about sales of the land entered, and in this case patent is ordered issued in the name of the dead applicant. V. 11, p. 100

36. The certificate of the clerk of the District Court, that no suit is pending involving the claim filed in lieu of the judgment roll, is equally satisfactory for the purposes of this case . . . . . V. 11, p. 100

Colorado, 2; Practice, 28; Town-site, 1, 2.

Minnesota.
Indians, 7, 8; Swamp Land, 4, 6.

Missouri.
Relative to Iron Mountain Railroad.
V. 11, p. 127

Montana.
Consideration of appointment and duties of deputy clerks of court in Montana.
V. 11, p. 275

Mortgage.
Pre-emption, 65.

Mulvihill, Thomas.
Relief of . . . . . V. 11, p. 112

Navy.—*See Soldiers.*
Relative to longevity pay . . V. 11, p. 383

New Mexico.
Indians, 4.

Newspaper.—*See Publication.*

Niobrara Reservation . . . . V. 11, p. 373

Notary Public.
Affidavit, 3; Attorney, 4.

Notice.

1. The evidence shows that Little had no notice of Durant's prior claim to the land in dispute. The tract is accordingly awarded to him . . . . . V. 11, p. 166

2. It is improper to exclude evidence relative to notice, when a decision is made upon the ground of failure of notice . V. 11, p. 104

3. Personal notice of a hearing is required in all cases where it can be made, and notice by publication is permitted only when from ignorance of the party's address it cannot be made. In such case, in addition to publication, the attacking party must mail a copy of the notice to the last-known address of the defendant, and also post a copy of the same upon the land . . . . . V. 11, p. 340

4. The service of personal notice is deemed sufficient when made inside or outside of the State or Territory wherein the land is situated.
V. 11, p. 210

5. In case of error or inadvertence in first affidavit of contest when notice has issued, such notice may be withdrawn and another notice issued based on an amended affidavit.
V. 11, p. 253

6. Testimony should not be taken before an official other than the local officers without due notice of such fact, the time and place being stated, and the name and official character of the officer before whom the testimony is to be taken being also given . V. 11, p. 274

7. Where a contestant has not conformed to the rules, a new notice may be issued, and he may be allowed to proceed anew from point of departure. . . . . V. 11, p. 66

8. The several alleged defects in notices, pointed out by the defendant, are not considered material, or are not established.
V. 11, p. 161

9. Any question involving the sufficiency of the information on which the local office elected to proceed, disappears from the moment that notice is issued to the settler. The information in this case having been adjudged sufficient, another application to contest at the same time must be rejected. . . V. 11, p. 258

10. Where notice has issued on a contest affidavit, it is not proper thereafter to review, the sufficiency of the information therein contained . . . . . V. 11, p. 291

11. It is the notice of contest which gives jurisdiction to the district officers, and not the affidavit of contest on which the citation issues. V. 11, p. 339

12. Notice of contest by publication is authorized only in cases where personal service cannot be perfected; and a mere affidavit that the address of a defendant is *unknown* is not sufficient to authorize notice by publication . . . . . V. 11, p. 194

13. Sufficient grounds for notice by publication are not alleged . . . . V. 11, p. 226

14. In this case publication was made upon a showing altogether insufficient. Diligence in attempting personal service must be shown. V. 11, p. 354

15. The Rules of Practice as to notice of hearings must be complied with. The notices should specify place, day and hour, when the hearing will be held, and the day the decision will be rendered by the local officers. . . . . V. 11, p. 18

Affidavit, 13; Application, 3; Attorney, 1; Contest, 21, 26, 32; Homestead, 40; Preemption, 40, 41, 47, 53.

Officers and Soldiers.

Pay for loss of property by . V. 11, p. 383

Oregon.

Forfeiture of railroad in . . V. 11, p. 380

Relative to Umatilla reservation in. V. 11, p. 380

See Railroad Grant. Swamp lands, 7.

Osage Ceded Lands. . . . . V. 11, p. 316

Patent.

1. Where the title is in litigation, and opposing parties claim the delivery of the patent, it will be retained until the ownership of the land is judicially settled; but, if essential for purposes of the litigation, it may, on stipulation of the parties, be delivered to a responsible person to be held in trust for, and finally delivered to, the one legally entitled thereto. V. 11, p. 269

2. A certified copy of a patent is by law made evidence equally with the original document . . . . . V. 11, p. 12

3. A previous patent for part of this land having been declared invalid by the U. S. Court, the patent issued for Trevitt's claim will recite such fact . . . . . V. 11, p. 205

4. Proceedings where patent is issued describing a tract that is not shown upon the surveys and plats of the Land Office. V. 11, p. 59

5. The remedial act of June 15, 1880, does not apply to patented lands. After patent is sues, the Land Department has no further control over the land involved . . . . V. 11, p. 4

Appeal, 19; Attorney, 8; Fraud, 5, 7; Mines, 27, 29, 30, 32, 35; Pre-emption, 4, 64; Private Entry, 6; Survey, 5, 6.

Payment.

Final Proof, 1; Indians, 7; Practice, 18.

Pension.

Act increasing . . . . . V. 11, p. 383

Peru, Iowa.

Act relative to . . . . . V. 11, p. 382

Pipestone Indian Reservation. V. 11, p. 319

Placer.

Mines, 11.

Porterfield Scrip.

Mines, 10.

Poverty.

Abandonment, 2; Homestead, 24, 28, 36, 49

Practice.

1. Rule of Practice No. 20 is not intended as an unbending rule. The matter of continuances is largely discretionary . V. 11, p. 213

2. Proceedings under Rule 35, as amended. V. 11, p. 34

3. The testimony in contests in Dakota must not be taken before an officer interested in a case. Rule of Practice 35, as amended, explained . . . . . V. 11, p. 18

4. Testimony may be taken near the land in question notwithstanding the objection stated by the local officers. . . V. 11, p. 258

5. The propriety of the waiver of any Rule of Practice is a matter for the tribunal in charge, subject to exception and final adjudication by the Secretary . . . . V. 11, p. 324

6. A party who has failed to comply with the express requirements of one law cannot invoke the agency of Rule 79, or claim any benefit under another law which presupposes such compliance. A claimant, especially a protestant, who has taken no action under Rule 77, cannot, by motion to vacate a prior decision, stay proceedings as contemplated by Rule 79 . . . . . V. 11, p. 324

7. Rule 83 applies only where the matter subject to supervision is so presented that a reasonable presumption is raised in the eye of the law that there has been error or oversight, or that a proper administration of the public business requires the Department's intervention in order to prevent undue haste or injury to important and valuable interests. V. 11, p. 239

8. Rule 76 of Practice authorizes motions for review or reconsideration of departmental decisions when "in accordance with legal principles applicable to motions for new trials at law." This motion is not in accordance with such principles . . . . . V. 11, p. 338

9. The proper examination and use of the plats and public records in the local land offices, by the public, is not prohibited by law, and should not be denied upon grounds of public policy, except where such examination or use will interfere unnecessarily with the dispatch of the public business. V. 11, p. 82, 253

10. Proceedings to revest title in a party who mistakenly made a deed to the United States and procured the same to be recorded. V. 11, p. 12

11. Discussion of the question as to the right of the Register to enter lands under the circumstances . . . . . V. 11, p. 51

12. Where a public officer has refused the benefit of the law to an individual who has complied with the law, the claimant should not suffer . . . . . V. 11, p. 297

13. Where an individual has failed to comply with the demands of office practice or department rulings because of being misinformed or left uninformed by government officers, he should not suffer. . . . . V. 11, p. 297

14. An entryman should lose no rights where, through the misinformation of the local officers, he failed to file his application to enter in time. In cases of doubt, additional proof may be called for, and the statement of the local officer requested. . . V. 11, p. 114

15. Instructions as to the proper time and place for local officers to administer oaths and transact public business . . . . V. 11, p. 178

16. A local land office should not be closed on Saturday at noon, but should be open during proper business hours every day except Sundays and legal holidays. V. 11, p. 338

17. The correspondence from the office of a Surveyor General should not be signed by the Chief Clerk in his own name.
V. 11, p. 305

18. A check on a bank in payment of fees is not money. The transaction of official business at a private residence or other place than that designated is unwarranted by law.
V. 11, p. 3

19. Where an application has been received and is pending undecided, another application to enter should not be entertained.
V. 11, p. 34

20. Where an entry has been canceled, and sixty days are allowed in which to show cause for reinstatement of said entry, there can be no other appropriation of said land until the entryman declined to show cause, or the period expired. Under the circumstances it was competent for the Commissioner to order no disposition of the land until final determination of the legality of the entry. V. 11, p. 279

21. For the reasons stated, motion for review is denied . . . . . V. 11, p. 163

22. Before appeal is filed from their decision, the local officers may entertain motions for review or rehearing . . . . V. 11, p. 275

23. A timber culture contestant's rights should not be prejudiced by his failure to file motion for reconsideration of decision until five months after the required time, where the excuse for such failure is the neglect of the local officers to complete the record of the case by including therewith his application to enter . . . . . V. 11, p. 55

24. In view of the allegations a rehearing is allowed, notwithstanding after notice the claimant was not at the hearing, and did not appeal from the local officers' decision.
V. 11, p. 178

25. Motion for rehearing is denied in view of want of notice to the opposing party, and the contents of the supporting affidavits.

26. Because of irregularities and non-compliance with the Rules of Practice, the case is remanded for re-hearing after due notice.
V. 11, p. 2

27. *Certiorari* is not a writ of right, and whether it should issue in any case, lies within the discretion of the tribunal to which such petition is addressed. The ground in this case upon which it is allowed is the death of the claimant, and the want of notice to his privy in estate . . . . . V. 11, p. 99

28. When any official act is shown to have been performed in a substantially regular manner, it may be assumed that the formal pre-requisites have been complied with. Where a mineral land entry is erroneously canceled, the claim covered thereby is not subject to appropriation by strangers to the record.
V. 11, p. 99

See Affidavit, Appeal, Contest, Railroads, 24

Pre-emptions.

1. Where at the time of filing his declaratory statement the claimant was not a qualified pre-emptor, but the disqualification was removed before a valid adverse claim intervened, the claimant is entitled to perfect his entry . . . . . V. 11, p. 115

2. Where a party conveyed one acre of three hundred and twenty to his infant child, and resided with a neighbor three weeks before going upon his pre-emption claim, he cannot be considered a qualified pre-emptor.
V. 11, p. 168

3. Goyne removed from his own land, as the deed of sale of his land did not take effect until its delivery, which was subsequent to date of his filing . . . . . V. 11, p. 6

4. Issue of patents for pre-emption entry should not be suspended nor submitted to the Board, because the pre-emptors had not declared their intention to become citizens at the time of their declaratory filings, although such declarations were made prior to proof.
V. 11, p. 116

5. A pre-emptor acquires a right against the United States by his settlement, and a right against third persons by his filing; the latter is technically the "right of pre emption," which may be forfeited by failure to file or to make payment in favor of the next settler or purchaser; the former is not forfeitable for either cause, and is the "claim" which the granting act declared should except the land from the grant . . . . . V. 11, p. 143

6. Acts performed with the intent of reserving the land for future settlement are not regarded by the pre-emption laws. Acts of settlement consist in a permanent improvement of the land with the desire of appropriating it . . . . . V. 11, p. 250

7. Breaking the surface of the ground with a pick to the extent of six or eight feet square to the average depth of an inch, and the erection of two boards with notices thereon, do not constitute settlement . . . . V. 11, p. 250

8. To be recognized as a settlement, there must be the intent to appropriate the land, and some act upon it indicative of the intent, and the two must harmonize. Neither alone is sufficient . . . . . V. 11, p. 311

9. The acts of Howden manifested an intent only to reserve the land for future settlement, and such an act of reservation is not recognized by the pre-emption laws. V. 11, p. 311

10. Going upon land and selecting a building site is not an act of settlement. The mere inspection of a tract of land does not constitute settlement . . . . . V. 11, p. 239

11. No one can acquire a settlement right to public land by virtue of plowing or other acts performed by an agent . . . V. 11, p. 73

12. Peters initiated a valid settlement, but did not follow it up by acts of improvement and inhabitancy . . . . . V. 11, p. 169

13. When a pre-emption claim has attached by settlement to offered land, though the settler may be in laches with his filing, such tract is excepted from the operation of any grant which is limited to lands free from pre-emption claims . . . . . V. 11, p. 219

14. The actual settler is always preferred in cases where two parties claim the same tract of land . . . . . V. 11, p. 53

15. Owing to the death of the Receiver, the local office was closed for the transaction of business. Settlements made upon public lands during such period are legal. Settlement is a pre-requisite act of filing. V. 11, p. 198

16. The testimony of one witness to the *bona fides* of such settlement, uncontradicted, coupled with corroborating circumstances, is sufficient to establish *prima facie* the validity of the settlement . . . . . V. 11, p. 314

17. The date of settlement is a fact to be proved in *ex parte* and contested cases. The evidence shows that the settlement alleged was not a mere intention to settle, but was actual settlement, followed up at once by the erection of a house . . . . . V. 11, p. 340

18. Engelman settled on a lot included in his claim, which lot he afterwards abandoned. Having failed to connect himself with any part of the remaining portion of his claim by settlement until after an adverse claim attached, he cannot hold the same as a pre-emptor . . . . . V. 11, p. 195

19. Large quantities of public land cannot legally be enclosed, and the party so enclosing gains no rights under the pre-emption laws . . . . . V. 11, p. 127

20. Two or more pre-emptors may settle on the same forty acre tract, notwithstanding notice of the first settler's claim thereto. Unless the forty-acre tract is enclosed, such subsequent settlement is not a trespass under the Atherton-Fowler decision. It is not intimidation for a subsequent settler, a single man, to build his house within a few feet of the house erected by a prior settler, a young unmarried woman. . . . . V. 11, p. 52

21. A pre-emption and a homestead filing cannot be made by the same party and prosecuted at the same time. . . . . V. 11, p. 338

22. Special care should be taken in applications to correct erroneous entries or filings or for second entries . . . . . V. 11, p. 260

23. An amendment of a filing upon one tract cannot be allowed to embrace a different tract, so as to defeat an entry made in good faith upon the latter tract, subsequently to the original filing, but prior to amendment. V. 11, p. 6

24. In view of the facts a second filing was allowed . . . . . V. 11, p. 231

25. Where a party's offered filing was rejected because the land was covered by an entry, he is not concluded from offering his filing again after the cancellation of the entry. V. 11, p. 253

26. Engelman's first filing was in the form of a square, his requested amendment in the form of capital letter L, and his second filing in the form of a Roman cross with the lower end or projection cut off. In view of the facts stated in the decision, he is declared a qualified pre-emptor . . . . . V. 11, p. 195

27. After the expiration of a declaratory statement, there is no legal settlement, because there is no application. The pre-emptor's right to reserve the land or that of any one claiming through him, is forfeited to the first legal applicant, by the failure to pay for it . . . . . V. 11, p. 73

28. Township plat filed April 4, 1882, pre-emptor made settlement in July, 1881, and filed for wrong tract April 5, 1882. Homesteader made entry of land in dispute April 7, 1882. As pre-emptor applied for correction of the error within the time allowed him for filing, and his improvements on the land were notice to the homesteader, the latter's entry is ordered canceled, and the pre-emptor is permitted to make his entry. V. 11, p. 263

29. A filing should not be allowed where settlement is alleged subsequent to date of a timber culture entry covering the same land. V. 11, p. 23

30. Where a settler has filed a pre-emption declaratory statement, he cannot make homestead entry of the same tract during the existence of such filing . . . . . V. 11, p. 325

31. The reasons given are held insufficient to allow a second pre-emption filing. V. 11, p. 263

32. Where a pre emptor has established a *bona fide* residence, a temporary absence will not be construed as an abandonment of the land; and a failure of the local officers to perform their duties will not operate to his prejudice . . . . . V. 11, p. 230

33. For the reasons given, the decision of July 5, 1882, is reversed . . . V. 11, p. 217

34. All absences which do not impeach a pre-emptor's good faith are permissible. He who sleeps on his claim in a pen or in the open air, intending to erect a habitable dwelling as soon as his means or occupation permits, maintains a satisfactory residence . . V. 11, p. 39

35. An actual home on the land to the exclusion of one elsewhere is a necessity under the pre-emption law . . . . . V. 11, p. 231

36. As long as a pre-emptor complies strictly with the pre-emption laws, his locating upon land adjoining a town does not in any way reflect upon his good faith toward the government. Short visits to the land involved is not

the residence contemplated by the pre-emption law . . . . . V. 11, p. 251

37. In view of the Act of March 3, 1877, the pre-emption entry is allowed within the incorporated limits of a town . V. 11, p. 169

38. The rights of a pre emption settler who was compelled to leave and be absent from his claim on account of Indian hostilities, should be protected . . . . . V. 11, p. 74

39. A settler does not comply with the pre-emption laws who simply uses his land as a herding place for cattle, while he resides at a distance . . . . . V. 11, p. 184

40. A proclamation is held to be sufficient notice to a pre-emption claimant to perfect any preferred right that he might have on lands which are offered for sale by such proclamation; and where a public notice was duly published at the place whereat interested parties were bound to seek information regarding the public lands, a failure to learn of it is their neglect only . . . . V. 11. p. 104

41. A notice to pre-emption claimants to prove up their claims before date of public sale is *ex gratia*, and the absence of such notice would not invalidate the sale.
V. 11, p. 104

42. Pre-emption affidavits before Probate Judges . . . . . V 11, p. 250

43. How final proof in pre-emption cases should be made . . . . . V. 11, p. 311

44. How pre emption affidavits should be taken before Probate Judges . . V. 11, p. 231

45. A widow cannot transmute a pre emption filing in whole or in part to a homestead entry. The executor, administrator, or one of the heirs, may complete the pre-emption entry, in which case the entry and patent will be in favor of the heirs. Should no proceeding be intended by the heirs in a case like the one under consideration, the widow may make an original homestead in her own name.
V. 11, p. 311

46. If a pre-emptor dies before establishing his claim, and his widow continues to reside upon the land, and in the meantime (no other heirs claiming) makes a homestead entry thereof, she will be entitled to credit for residence under said homestead entry, from the date of said settler's death only. V. 11, p. 42

47. Because motion to dismiss an unwarranted contest against a pre-emptor should have been allowed, it does not follow that the pre-emption proof should also be dismissed, or notice given to a homestead claimant who made entry subsequent to such contest.
V. 11, p. 41

48. The evidence presented is not satisfactory, and additional proof is required, with full opportunity for cross-examination. V. 11, p. 124

49. Pre-emption proof and corrections of filings and entries . . . . . V. 11, p. 356

50. The mere purchasing of improvements gives no preference right to the land upon which the improvements exist; but if the purchaser makes the first settlement thereafter, these improvements are his in the eye of the law . . . . . V. 11, p. 239

51. An entry will not be suspended because of the judgment granted by a local State court, ejecting a party for settling upon unlawfully enclosed public land . V. 11, p. 52

52. Notwithstanding the pre-emptor cultivated only a quarter of an acre, his final proof is accepted. . . . . V. 11, p. 41

53. Copy must be followed in published notices. Figures when from necessity changed to words must not increase the cost of publication. Newspapers that extort money by such changing of figures to words cannot be considered "reputable." . . . V. 11, p. 195

54. The several questions in the blank pre-emption proof should be read to the parties making the affidavit . . . . . V. 11, p. 218

55. The witnesses are presumed to reside sufficiently near the land and residence of the pre-emptor to be able to make oath to facts within their own knowledge; and if so, it would seem to be more convenient for them to go before an officer in that county than in some other county . . . . . V. 11, p. 116

56. Owing to the non-continuous residence of the pre-emptor, his final proof is rejected, but such rejection is held not to prejudice his right to show compliance with the law at any time prior to the expiration of thirty-three months from date of settlement. A settler must establish a *bona fide* residence upon his land before excuses for absence will be accepted . . . . . V. 11, p. 198

57. When a pre-emptor alleges settlement prior to a homesteader on the same tract, such pre-emptor may give notice of his intention to make final proof, and then postpone the making of such proof to any convenient time during the period in which he is allowed to make final proof . . . . . V. 11, p. 356

58. A pre-emptor may give notice of intention to make final proof prior to the time allowed by law, and on such published date may decline to make proof. He does not forfeit his claim thereby. He has the entire period in which to prove up, unless contest on the question of propriety arises.
V 11, p. 373

59. This case is distinguished from Ramage *vs.* Malony as herein the adverse claim was initiated long before the final proof proceedings were commenced. In the latter case the beginning of final proof proceedings was held to cut off an adverse claim initiated subsequent to such first steps in the final proof.
V. 11, p. 195

60. No dependence can be placed upon the certificate of the local officers acting within the scope of their authority or otherwise, as the agents of the government. It is the claimant's duty to see that they do not make mistakes in his case. . . . . V. 11, p. 148

61. A pre-emption settler who is in actual possession of a tract of land, and cultivates and improves it, but fails to make final proof in time, has a superior claim to others claiming under soldier's additional homestead entries. This case presents facts that demand the exercise of the supervisory power vested in the Secretary of the Interior. V. 11, p. 341

62. The pre-emption entry involved is held

for cancellation because made for purposes of speculation in the timber growing on the land. Purchasers from the entryman have no standing in the case . . . . . V. 11, p. 280

63. The right to assign and convey, after proof, payment, and final certificate is, so far as relates to a *bona fide* pre-emption, without any restriction whatever; and whether such assignment was or was not made to a *bona fide* purchaser is immaterial as affecting the right of the entryman to assign and convey.

V. 11, p. 181

64. Purchasers from persons who hold final certificates purchase with notice that the Land Department is but an administrator of the law, and that it has no authority to issue patents to pre-emptors or entrymen who have not complied with the law or have procured their certificates by fraud . . . . . V. 11, p. 181

65. The evidence in this case does not sustain the charge of speculation. A mortgage given by a pre-emptor on the land embraced in his filing as security for money borrowed to enable him make his entry, does not alienate his title, and is not prohibited by law.

V. 11, p. 40

66. There is no law inhibiting a person from acquiring a pre emption right to public land simply because he had been claiming and holding other lands unsurveyed and not in the market, by means and for purposes unknown to the law . . . . . V. 11, p. 342

67. In the absence of positive proof showing fraudulent intent, the pre-emption entry of Clark is allowed to stand . . . V. 11, p. 24

68. In view of the fraudulent proof presented, the pre-emption filings involved are ordered canceled . . . . . V. 11, p. 5

69. A hearing may be ordered after final proof has been made in a pre emption case, to ascertain fraud reported by a special agent.

V. 11, p. 74

70. Certain pre-emptors who had the thirty-three months in which to make their proof, made the same within six months from date of filing, and their entries were ordered canceled for fraud. They are allowed to offer further proof of compliance within the said thirty-three months. . . . . V. 11, p. 105

71. Conflicting pre-emption claims.

V. 11, p. 194

72. This board revokes its approval of the pre-emption cash entry of Martin Conlin for the reasons given . . . . . V. 11, p. 169

Contest, 3; Desert Lands, 5, 18, 20; Homestead, 46, 47, 63, 69; Indians, 5; Preference Right, 1; Railroad, 5, 13; Repayment, 1; State Selections, 3, 12, 23; Timber Land, 10, 11; Town-sites, 8, 11.

Preference Right.

1. A party who has exhausted his homestead, pre-emption, and timber culture rights, gains no preference right by successfully contesting a homestesd entry for abandonment. He cannot contest for non-compliance with law a timber culture entry . . V. 11, p. 146

2. When an entry is relinquished after a contest to cancel it is commenced, the relinquishment inures to the benefit of the contestant who has the preference right of entry by law . . . . . V. 11, p. 54

3. Where a contest between agricultural claimants results in the cancellation of the contestant's entry, he is not entitled to a preference right of entry upon the subsequent cancellation of the contestee's entry, as in this case . . . . . V. 11, p. 326

Application, 2, 8; Contest, 4, 17, 24, 40; Homestead, 17; Relinquishment, 4; Timber Culture, 23, 24, 38; Timber Land, 3.

Private Entry.

1. Agricultural lands should be held generally for settlement under the homestead and pre-emption laws, and not be disposed of at private entry . . . . . V. 11, p. 84

2. Certain offered lands were selected by the State of California, and such selections were afterward declared null and void. *Held*, That the lands are not subject to private entry.

V. 11, p. 239

3. When lands once offered are again withheld, even temporarily, from private sale, timely notice of their restoration to market should be given, in order to secure to all persons an equal opportunity to become purchasers . . . . . V. 11, p. 46

4. Lands reduced in price cannot be sold at private entry until after re-offered at the reduced price . . . . . V. 11, p. 222

5. The private scrip and warrant locations, if invalid, are, in the opinion of the Department, voidable only and not void. In view of the doubt on the whole case, the ruling of October 2, 1884, is vacated, and the questions at issue will receive further consideration.

V. 11, p. 371

6. Where a private entry of unoffered lands was inadvertently allowed and afterwards patented, proceedings in court to set aside the patent will not be recommended at the request of parties who fail to show fraud or an adverse claim at date of entry or any equities therein . . . . . V. 11, p. 123

7. The proceedings of Whiteman do not constitute entries . . . . . V. 11, p. 28

Railroad, 16; Swamp Lands, 2; Timber Lands, 15.

Private Land Claims.

1. Grants made by the representatives of France, after the cession of the Province to Spain, were void, unless recognized by Spanish authority subsequent to the cession, and before the transfer by Spain to the United States . . . . . V. 11, p. 267

2. There is no authority of law empowering the General Land Office to adjudicate affirmatively and declare claims under foreign grants, to be held by *complete title*, in effect to confirm the same. Parties relying upon such grants must assert and defend their claims, if assailed, in the courts. V. 11, p. 267

3. Lands within the claimed limits of a Mexican grant are excluded from settlement under the public land laws until the final survey thereof has been approved. V. 11, p. 204

4. A Southern land claim in Missouri.

V. 11, p. 266

5. The proceeding in this case is unauthor-

ized. There is no law empowering the Land Department to adjudicate and confirm titles of claims under this act, as it has expired by limitation and is of no force . . V. 11, p. 238
Railroads, 26, 27; Survey, 17.

Probate Judge.
Affidavit, 2; Pre-emption, 42, 44.

Public Land.
1. Unlawful occupancy of . . V. 11, p. 380
2. The strip of land lying north of Texas and west of Indian Territory, designated on the maps as public lands, is not subject to entry or disposal . . . . . V. 11, p. 12
Railroad, 34.

Publication.
Affidavit, 6, 9; Attorney, 2; Final Proof, 12, 13, 14, 15, 16, 17; Homestead, 59, 60; Mines, 25. See Notice.

Public Notices.—(See Executive orders).
No. 896. Transfer of Townships from Spokane Falls to Walla Walla Land District, Washington Territory . . . . . V. 11, p. 47
No. 897. Additional Land District in Colorado . . . . . V. 11, p. 175
No. 898. Additional Land District in Idaho. V. 11, p. 175
No. 899. Transfer of Townships from Sacramento and Stockton to Bodie Land District, California . . . . . V. 11, p. 366
No. 900. Land Office from Deadwood to Rapid City, Dakota . . . . . V. 11, p. 367

Pueblo Lands.
Consideration of the Thompson survey of the Pueblo lands of San Jose, California. V. 11, p. 83

Quarter Section.
What constitutes a quarter section of public land . . . . . V. 11, p. 212

Railroad Grant.
Forfeiture of, in Oregon . . V. 11, p. 380; Texas Pacific Railroad Grant . Vol. 11, p. 380.

Railroads.
1. Selections of land lying within the State of Alabama within six and fifteen miles of the railroad constructed in Georgia cannot be approved under the acts of June 3, 1856, and April 10, 1869 . . . . . V. 11, p. 299
2. The act of April 21, 1876, contemplates a homestead entry of land within a railroad withdrawal, which tract was covered by a prior homestead entry at the date of restoration to market of the vacant lands in those limits, and therefore not included in the lists of lands actually restored . . V. 11, p. 239
3. Where entry is made after expiration of time for completion of road and before extension of time, it can be confirmed under the act of April 21, 1876 . . . . . V. 11, p. 27
4. Where a party settled on an odd-numbered section of land within the granted limits of a railroad, after the definite location of the road, but before the land was formally withdrawn for railroad purposes, he is entitled to a patent under Sec. 1 of the Act of April 21, 1876 . . . . . V. 11, p. 150
5. Where a pre-emptor settled on a tract of land after the filing and approval of the map of location, but prior to the date of the withdrawal, the land is excepted from the grant. It does not matter whether the pre-emptor files his declaratory statement within three months from the date of his settlement or not, in such cases . . . . . V. 11, p. 58
6. A relinquishment of a specified tract, properly executed by the grantee, must be filed before a selection in lieu thereof can be made under the act of June 22, 1874. V. 11, p. 58
7. The waiver of the predecessors of this company of April 1, 1876, does not embrace parties who purchased after March 26, 1881, the improvements and relinquishments of settlers who themselves would have been embraced by said waiver had they not relinquished or abandoned their claims. V. 11, p. 345
8. Where an entry existed at date of filing map of general route, which was, after such filing and before definite location of the road, canceled for voluntary relinquishment, the land covered thereby becomes public land and is open to the first legal applicant. It is not necessary in order to except the land from the grant, that the first entry be carried beyond the date of definite location of the road. V. 11, p. 9
9. Entries by settlers will be allowed on lands embraced in the grant to this company on allegations of settlement, in accordance with the waiver of the company of March, 1881 . . . . . V. 11, p. 357
10. Where a settler was entitled to relief under the relinquishment of this company of April 1, 1876, the land involved was excepted from the grant, and thereafter, if he did not prove up, another settler could take the tract under the homestead or pre-emption law. V. 11, p. 280
11. Though the location or selection of the railroad company was of record and not canceled, the pre-emptor acquired a right to the land by his settlement . . . . . V. 11, p. 118
12. The land involved was not affected by the withdrawal of August 13, 1870, not being public land, and after cancellation of the entry covering it, the tract was subject to homestead entry . . . . . V. 11, p. 171
13. The land being "occupied" by a qualified pre-emptor at the date of withdrawal, excepted the land from the railroad grant. V. 11, p. 252
14. An entry irregularly made, which is voidable on account of such irregularity, though according to the practice of the Land Department liable to be cured by supplemental affidavits, is not an entry void *ab initio*, but excepts the tract it covers from a railroad grant taking effect after such entry has been made . . . . . V. 11, p. 172
15. In view of the status of the land, amendment to filing to include tracts in an odd-numbered section is permitted. V. 11, p. 28
16. Prior to the railroad withdrawal, and the offering of the tract at public sale, Wolford made settlement. As the tract was not sold, nor thereafter purchased at private entry, it was excepted from the grant, Wol-

ford having lived upon and cultivated the same at date of and since the grant took effect. V. 11, p. 327

17. Where a portion of a settler's house is upon the tract applied for, he is entitled to claim the land which he has improved and cultivated. . . . . V. 11, p. 358

18. The lands occupied by actual settlers prior to June 28, 1876, although withdrawn for general route, were excepted from the railroad grant by the Joint Resolution of Congress of that date . . . . . V. 11, p. 358

19. A pre-emption filing of record at withdrawal for, and definite location of, a railroad excepts the tract involved from the railroad grant, notwithstanding non-residence is shown. V. 11, p. 117

20. The Eben Owen decision is held not to apply to the present case, as there was no selection by the railroad company of the tract which is in the indemnity limits. As there never was a decision on the merits of this case, and the homesteader has kept alive his claim by residing on the land, a decision is made in his favor in view of the facts. . V. 11, p. 171

21. The act of March 3, 1865, enlarging the grant of lands to this company, did not take effect as of the date of the original grant of 1857, so as to embrace lands which at the date of the latter grant were lawfully appropriated. Lands of this character were excepted from the grant . . . . . V. 11, p. 151

22. Where the claimant settled as far back as 1853 or farther, and complied with all the requirements of law, except filing notice of his claim within the time fixed by statute, the act of June 25, 1874, exempted him from forfeiture; and having within twelve months after survey made proof showing the *bona fides* of his settlement, etc., established a claim superior to that of the railroad company, accruing by withdrawal and definite location (including the land in question) in the meantime. V. 11, p. 286

23. An entry of record reserves the land from any subsequent law, grant or sale, until a forfeiture is declared and the land restored to the public domain in the manner prescribed by law. When an entry is canceled another should not be allowed until the cancellation becomes final . . . . . V. 11, p. 264

24. The Commissioner should forward each case separately to the Secretary; any other practice tends to confusion . . V. 11, p. 264

25. The Atchison, Topeka and Santa Fe Railroad Company can relinquish the tract in controversy to Turner, and the company be allowed credit for it on the 15,000 acres excess certified to it . . . . . V. 11, p. 10

26. Lands finally excluded from a private grant do not pass to a railroad located while the grant was *sub judice*, on the ground that the private grant was confirmed by specific boundaries prior to the railroad grant . V. 11. p. 88

27. All legal subdivisions of odd-numbered sections within railroad limits, lying upon the original boundaries of a rancho, the major portion whereof are without such boundaries, inure to the railroad grant . . . V. 11, p. 11

28. As an uncanceled homestead entry covered the land in question both at the time said resolution was adopted and the map filed, it is apparent that which ever of said dates is adopted, as the date of withdrawal, the claim of the company must fail, it not having selected said tract prior to the entry now under consideration . . . . . V. 11, p. 329

29. The right to lieu lands is only a float which attaches to no specific tract prior to selection by the railroad company. V. 11, p. 150

30. A railroad company may relinquish its right to select any particular tract within its indemnity limits, such relinquishment operating as a waiver and estoppel of its present or future claim to such tract . . . V. 11, p. 150

31. Congress did not intend to grant to this railroad company lands occupied in good faith by homestead settlers . . V. 11, p. 185

32. An entry of land embraced within indemnity limits, made after revocation of one withdrawal and prior to second withdrawal, excepts the tract from the railroad grant. Lands within indemnity limits are subject to executive control, and withdrawals thereof may be revoked . . . . . V. 11, p. 57

33. Lands within the indemnity limits of a railroad grant are not granted lands. The railroad company does not acquire title thereto until selection . . . . . V. 11, p. 106

34. A railroad withdrawal in general terms only withdraws from market public lands lying within the limits of the withdrawal. Lands covered by homestead entries are not public lands. Withdrawal of land within indemnity limits should be more strictly construed against the grantee than a withdrawal within granted limits. The object of such latter withdrawal is only to make good the quantity lost within the granted limits. Only so much land may thus be withdrawn as shall satisfy the grant. Land improved by settlers may be excluded from the withdrawal . . . . . V. 11, p. 106

35. A homestead entry, embracing a tract in the indemnity limits of a railroad grant, like the one under consideration, subsisting at the date of withdrawal, excepts the land therefrom . . . . . V. 11, p. 315

36. A right to select lands within certain limits, in case of deficiency within the granted limit, was alone conferred—not a right to any specific land or lands capable of identification by any principles of law or rules of measurement. Neither locality nor quantity is given, from which such lands could be ascertained. V. 11, p. 345

37. A school indemnity selection, improperly allowed under the practice in force and extant on the records for fourteen years and then canceled, is such an appropriation as excepts the tract from a railroad grant like the one in question taking effect during the time such selection remained uncanceled. V. 11, p. 220

Homestead, 18, 66; State Selection, 9.

Rancho de Napa, California . V. 11, p. 127

Relinquishment.

1. The authorized agent of the heirs of a

decedent may make relinquishment of a timber culture entry of the land, but an executor, acting in his capacity by authority derived from the will, cannot . . . . V. 11, p. 149

2. Where a party procures the relinquishment of an entry before, but does not file it until after, the initiation of contest by another party, as in this case, the cancellation of the entry will inure to the benefit of the contestant . . . . . V. 11, p. 325

3. When a relinquishment of an entry is filed, it takes effect immediately upon the land so released, and thereafter the tract is as fully open to settlement and entry as though a former entry had never existed. V. 11, p. 238

4. An entry should be canceled *instanter* upon the filing of a relinquishment, without regard to preference right . . . V. 11, p. 105

5. A third party who can adduce satisfactory reason for believing that a timber culture relinquishment has been executed and sold and not the purchaser, may institute a contest to discover if there really has been such relinquishment and sale. . . . . V. 11, p. 234

6. The testimony indicates bad faith, and a mere pretense of settlement. No cultivation is shown, and absence for nine months is proved. Evidence tending to prove that defendant had relinquished her claim, shows the motive and purpose of her long absence from and neglect of the land . . V. 11, p. 53

Affidavit, 5, 15; Contest, 20, 39; Desert Lands, 21; Entry, 9; Homestead, 70; Preference Right, 2; Railroad, 6, 7, 8, 9, 10, 25, 30; Timber Culture, 7, 17, 34.

Repayment.

1. Through ignorance of the law, this party made pre-emption cash entry. As he did not wilfully commit wrong nor is guilty of any fraud, the repayment of his purchase money is ordered . . . . . V. 11, p. 371

2. Repayment of excess above minimum price is refused . . . . . V. 11, p. 204

3. There is no law authorizing repayment of purchase money where the entry was obtained by fraud. . . . . V. 11, p. 13

4. There is no authority to grant repayment where, through the erroneous survey of a private company, and not through error of the government surveys, a party made desert land entry of a tract which he thought adjoined a canal, but which, as was afterwards discovered, could not be irrigated or reclaimed from its waters . . . . . V. 11, p. 120

5. An entry made in violation of law, and therefore "erroneously allowed," cannot be legally "confirmed." Repayment may be permitted under the act of June 16, 1880. V. 11, p. 60

Timber Culture, 23.

Renault Grant.

No action can be taken by the land department on this grant until Congress confirms the title . . . . . V. 11, p. 360

Relief.

Suggestions for granting relief under the circumstances recited . . . . . V. 11, p. 156

Reservation.—*See Military, and Indians.*

Desert Lands, 2.

Residence.

Abandonment, 1, 2; Contest, 38; Entry, 9; Homestead, 4, 9, 28 to 52, 78; Indians, 2; Pre-emption, 32, 34, 35, 36, 39, 56; Railroad, 17, 19, 20; Timber Culture, 30.

Review.

Appeal, 11, 17; Contest, 29, 44; Notice, 10; Practice, 8, 21, 22, 23, 25.

Revolutionary Bounty Land Scrip. V. 11, p. 108

Sac and Fox Reservation.—*See Kansas.*

Santee Reservation . . . . . V. 11, p. 373

School Lands.

1. Suits for damages against trespassers thereon may be brought in the local courts by United States officials . . . . . V. 11, p. 134

2. Indemnity school selections will be rejected when based on deficiencies alleged to exist on account of pre-emptors who have failed to offer final proof within the required time . . . . . V. 11, p. 239

3. In California . . . . . V. 11, p. 301

4. In Colorado . . . . . V. 11, p. 29

5. Sale of . . . . . V. 11, p. 111

Indians, 10; Mines, 6; Railroad, 37; State Selection, 9, 10; Survey, 13.

Schwatka, F. G.

Relief of . . . . . V. 11, p. 63

Scrip.

1. Assignment required from the *legal representative* of the confirmee of the claim for which the scrip was issued . V. 11, p. 283

2. Assignment having been made by attorney in fact of legal representatives of confirmee, without accompanying evidence of his authority, the same is required to be furnished . . . . . V. 11, p. 270

3. Certificate returned and blank assignment required to be perfected . . . V. 11, p. 270

4. Affidavit required showing the true spelling of the name, and proving the identity of the assignee. . . . . V. 11, p. 269

5. Entry by *Peder* P. Lomem, on assignment of scrip to *Peter* P. Lomem. Affidavit required showing true name and identity of party . . . . . V. 11, p. 269

6. Assignee required to show by affidavit how he became possessed of the scrip, and to account for the erasure, etc . . V. 11, p. 269

7. Supreme Court scrip is the equivalent of a legal tender, and when used in payment of land, it will be forfeited the same as money where fraud is shown in the entry. V. 11, p. 76

8. Two certificates of location for 160 acres each, authorized to be issued, in lieu of one of 320 acres, on application of the holders of the latter certificate . . . . V. 11, p. 269

9. Where a claimant or intermediary has sold part of his claim, he is not entitled to indemnity certificates for the land sold. When two or more such claims are located in place, indemnity certificates should issue for the quantity embraced in the overlapping or interference of the claims . . . V. 11, p. 317

10. Where agricultural college scrip can be located . . . . . V. 11, p. 347

11. The application to enter with Valentine scrip a strip of land alone Lake Union, as

described, is rejected on account of the riparian rights or ownership of certain donation claimants. . . . . V. 11, p. 283

12. The kind of land Dodge Scrip is locatable upon . . . . . V. 11, pp. 76, 88

13. The rejection of the Chippewa scrip locations is sustained. The matter is considered *res judicata*. The final decision of the head of a department is binding upon his successors, subject to certain well-established exceptions . . . . . V. 11, p. 282

14. Consideration of the laws granting revolutionary bounty land scrip to officers and soldiers of the Virginia line . . V. 11, p. 108

15. Substitution of cash for military bounty land warrants, how made . . . V. 11, p. 239

16. Where a military bounty land warrant has been properly assigned and located by an assignee, the caveat by the Commissioner of Pensions, can have no effect in view of the law making military bounty land warrants assignable . . . . . V. 11, p. 175

Private Entry, 5.

Settlement.

Appeal, 1; Contest, 18, 20, 49; Desert Lands, 2, 21; Entry, 9; Fencing, 1, 2, 3; Homestead, 1, 4, 5, 6, 7, 8, 9, 27, 82; Preemption, 5 to 13, 15, 16, 17, 18, 20, 27, 29, 50, 57; Private Entry, 11; Private Land Claim, 3; Railroads, 9, 11, 16, 22; Relinquishment, 3, 6; Survey, 16; Timber Culture, 15, 19. Town-site, 7, 9, 11.

Soldier.—*See Officer.*

Homesteads, 74 to 90.

Speculation.

Contest, 2; Entry, 3, 4; Homestead, 14; Pre-emption, 62, 65.

State Selections.

1. For California University. V. 11. p. 151

2. The presentation of a State Selection of a tract of land has the force of an application for entry of the tract, and unless it has been previously disposed of, the application must be received, The State agent or the government need not publish the selection or extend the statutory period within which an adverse claim may be filed . . . . . V, 11, p. 349

3. An expired pre-emption filing is no bar to a State selection on application in general, nor to the issuance of a patent. V. 11, p. 349

4. An entire list, as such, cannot be rejected. Each tract should be treated as in a separate application, and the application therefor be allowed or rejected without reference to another tract . . . . . V. 11, p. 349

5. The law does not authorize the imposition of the certification required by the Commissioner in this case . . . . . V. 11, p. 349

6. While an invalid State selection is no bar to the acquisition of lands under the homestead or timber culture laws, a selection of 800 acres, when only 320 acres are due, will reserve the entire amount until the amount due is selected therefrom. V. 11, p. 127

7. The date of presentation is the date of application to enter. Selection by the university allowed, although application was dated previous to the time of presentation. V. 11, p. 156

8. State selections will not be accepted where, at date of filing the application for the same, the land applied for is covered by applications under the timber land act of June 3, 1878. The State has the right to attack the validity of prior timber land claims upon proper and sufficient allegations. Until the prior entries are removed the land cannot be selected by the State . . . . . V. 11, p. 376

9. An invalid indemnity school selection subsisting at date of withdrawal excepts lands from a railroad grant . . . . . V. 11, p. 127

10. Invalid State Indemnity School Land Selections upon unsurveyed public lands in California, made and disposed of to purchasers in good faith prior to July 23, 1866, where no valid adverse claims thereto existed at the date of said act, are confirmed to said State, upon her indicating an equivalent acreage for the invalid basis of selection . . V. 11, p. 377

11. Where the survey under State authority fails to conform in description to U. S. survey, the State may change the description according to the U. S. subdivisional survey. V. 11, p. 377.

12. Approved State Selections convey full title. The act of March 1, 1879, cannot further pre-emption rights on lands already certified. V. 11, p. 127

Surveys.

1. Under some circumstances, a river bank may be re-surveyed . . . . . V. 11, p. 121

2. An application for survey of a tract will be rejected where the township plat shows the tract to be overflowed, and the private survey shows it to be sand, salt-marsh, and willows, with but a very small portion of cultivatable land, if any . . . . . V. 11, p. 330

3. The Land Department will not order a survey of land of the commercial value and importance of Arsenal Island near St. Louis upon mere *ex parte* and contradictory affidavits and statements, nor while it is uncertain to what extent the island may be required for public purposes . . . . . V. 11, p. 157

4. An island that, through the process of erosion and accretion, moves down stream at the rate of eight inches per day, has not the permanent characteristics which make it a solid part of the earth's surface applicable to supporting title under laws relating to the public lands, and application for survey of the same is denied.

5. Where survey has been incorrectly made, resurvey may be ordered at request of party holding patent for part of the land involved. It is no objection to such resurvey that a narrow strip is left in excess of the quarter section described in said patent. V. 11, p. 121

6. Where, as is this case, the platting of a survey is incorrect, and the purchaser paid for land according to the plat, he will be allowed to pay for the difference in area between what he purchased and what is correctly embraced in his application. The description in the patent determines the land to be conveyed. The patentee or his assigns in this case, will be called upon to pay for land not heretofore paid for. . . . . V. 11, p. 347

7. In surveying contracts in Dakota, the plats should be filed by the 1st of January following . . . . . V. 11, p. 157

8. A survey made by a county surveyor will not be recognized when it conflicts with the regular United States survey. V. 11, p. 269

9. Form and instructions for assignment of certificates of deposits for surveys. V. 11, p. 318

10. Where the cost of survey executed on the deposit system exceeds the sum deposited, the settler must deposit enough more to equal the cost . . . . . V. 11, p. 284

11. The excess of the amount of a certificate issued for a deposit made for the survey of public lands over the cost of lands entered under the pre-emption laws by one person may be applied in part payment for lands included in an entry of the same character by another. . . . . V. 11, p. 338

12. Filing an original notification is an *ipso facto* segregation of the land described from the contiguous lands, and after completing the term of residence required, the donee cannot amend it so as to include other lands. V. 11, p. 284

13. A partial survey declared to be final, which necessarily determines that a portion or all of section 16 or 36 belongs to a Mexican or Spanish Grant and is lost to the State, is the final survey of said grant contemplated by sec. 6, act of July 23, 1866 . . V, 11, p. 348

14. Correcting duplicate plats. Diagrams, how to be made, etc. . . . . V. 11, p. 284

15. The lines are not boundaries, but are run as means of ascertaining the quantity of land in the fractional subdivision. V. 11, p. 284

16. As the entryman settled upon the tracts prior to the issuance of instructions of September 22, 1883, his entry should remain undisturbed . . . . . V. 11, p. 255

17. The Secretary having finally approved the survey the subsequent approval of it by the Commissioner, was not a judicial, but a ministerial act which could not affect the rights of the State. The purposes in Sec. 1, act of 1864, and in Sec. 6, act of 1866, are clearly different and should not be confounded. The purpose in the latter act was to provide the means of vesting the right of lieu selection in the State, and it should be construed in aid of and not against said purpose . . . . . V. 11, p. 375

Attorney, 10; Chilili; Desert Lands, 4, 5, 6; Homestead, 67; Mines, 14, 15, 24, 27; Practice, 9; Pueblo Lands, Private Land Claim, 3; Repayment, 4; School Land, 2; State Selection, 11.

Surveyor.—*See County, Deputy.*

Appeal, 19; Practice, 9, 17.

Swamp Lands.

1. The bed of a lake covered by non-navigable water, and unsurveyed at date of swamp grant, is awarded to the State as swamp land, the water having receded . . . V. 11, p. 88

2. Lands withdrawn from market for any cause and not restored to private entry, while subject to homestead and pre-emption entry, are not subject to location with swamp land indemnity certificates. . . . . V. 11, p. 372

3. Louisiana is entitled to the benefits conferred by the acts of March 2, 1855, and March 3, 1857 . . . . . V. 11, p. 359

4. Where lands have been erroneously certified to a State under one grant, when they should have been certified under another, the Land Department has authority, upon reconveyance of the outstanding title, to make new titles under the proper law . . . V. 11, p. 60

5. A special agent may administer oaths while investigating fraudulent claims, but on a hearing in indemnity swamp claims he cannot administer oaths, for he acts as the government agent, and not judicially. V. 11, p. 222

6. In adjusting the swamp grant to Minnesota, the field notes of government surveys are the basis upon which action is taken, and the subsequent grant to the railroad company must be held subject to this adjustment of the swamp grant. . . . . V. 11, p. 75

7. In view of the allegations set forth, the testimony of the parties named as to the swampy character of the land on or as near as may be to March 12, 1860, will be taken and considered. . . . . V. 11, p. 374

Tenant.

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Testimony.

Cost of. . V. 11, pp. 18, 130, 188, 210, 226

Affidavit, 3, 6; Attorney, 3, 4, 6; Clerk, 2; Contest, 34, 37, 38, 39, 41, 43, 44, 45, 46, 47, 48; Desert Lands, 3; Final Proof, 2, 7, 16; Fraud, 5, 6; Good Faith; Homestead, 3, 5, 23, 24; Notice, 2, 6; Town-site, 11; Practice, 4.

Texas Pacific Railroad.

Forfeiture of grant . . . . . V. 11, p. 380

Timber Culture.

1. March 15, 1883, a clerk in the General Land Office resigned to take effect April 15, to which date he was paid. March 27, he made a timber culture entry. The objection thereto is merely technical, and he is allowed to commence *de novo* . . . . . V. 11, p. 127

2. A deserted wife is the head of a family, and entitled to make a timber culture entry. V. 11, p. 354

3. A successful contestant against a timber culture entry, before he can be allowed to enter the tract, must make affidavit that he has not exercised his right of entry since the institution of his contest . . . V. 11, p. 357

4. The timber culture entry of Gibson is allowed to stand, as the error in the case was the government's, and no prior rights are now involved . . . . . V. 11, p. 43

5. The theory that a certain entry was fraudulent at inception, cannot operate to defeat the statutory right of another to enter the land, who was not a party to such fraud. V. 11, p. 105

6. An alien may declare his intention to become a citizen, make a timber culture entry, and be absent from the United States thereafter for two years or more, without forfeiting his entry, providing he returns and the timber culture law is complied with . . V. 11, p. 25

7. A person who makes a timber culture

entry, which he subsequently relinquishes, is barred from making another entry under the timber culture laws. . . . . V. 11, p. 264

8. Under the circumstances, another timber culture entry with credit for fees and commissions is refused . . . . . V. 11, p. 26

9. The fact that after making a timber culture entry the claimant found a settler with improvements on his land, is no reason for the allowance of a second entry elsewhere. V. 11, p. 235

10. In view of the facts, restoration of right to a timber culture entry is denied. V. 11, p. 184

11. An application to enter cannot be considered where the affidavit was made prior to the filing of the township plat or where the land is not subject to entry . . . V. 11, p. 86

12. An applicant under the timber culture law is not required to present his application in person, and if he has recourse to the mail for the purpose of presenting to the local officers the instrument of his intention, he is entitled to the same consideration as if personally present. . . . . V. 11, p. 26

13. Aasland's contest papers were lost in the local land office. Notwithstanding the lapse of five years, he is allowed to enter the land in view of his improvements, and the evidence of Slater's abandonment. The recent contest of Anderson is dismissed. V. 11, p. 42

14. A timber culture application cannot be altered or amended by an attorney to include a different tract . . . . . V. 11, p. 7

15. Under the timber culture laws no settlement is required, and no right attaches until the application is filed in the local office. V. 11, p. 198

16. Butterfield filed with her affidavit of contest an application to make timber culture entry. Notwithstanding an adverse claimant, her homestead entry made instead of the timber culture entry, is allowed to stand. V. 11, p. 230

17. While a contest is pending, the timber culture entryman may file a relinquishment, and, if qualified, make homestead of the same land. But such homestead entry is subject to the contestant's rights. . . . V. 11, p. 116

18. A timber culture application cannot embrace land within two sections. V. 11, p. 54

19. Where a homestead entry is allowed because of prior settlement on a tract embraced in a timber culture entry, a second timber culture entry will not be allowed on another tract in the same section, nor will the second timber culture application be suspended to await the consummation of the homestead entry . . . . . V. 11, p. 87

20. As the timber culture affidavit in question was sworn to before the prior entry covering the land was canceled, the timber culture entry based on such affidavit is ordered canceled. . . . . V. 11, p. 252

21. Where at the time of commencing a contest to cancel a timber culture entry, the contestant tendered his application to homestead the land, and was advised that such application was not required, and the contestant relied on such advice, his contest will not be dismissed as illegal . . . . . V. 11, p. 74

22. The law does not authorize a sale of the right of entry under the timber culture act to the highest bidder, in case of simultaneous applications to enter the same tract. V. 11, p. 344

23. The law authorizes a repayment of money erroneously paid by a party for the preference right to contest a timber culture claim. . . . . V. 11, p. 187

24. After the case had been closed in the General Land Office, it was carried to the Secretary's office. Where a timber culture contest proceeds, an offer to file an application to enter is equivalent to filing. The contestant having proved his allegations, is entitled to a preference right of entry . . V. 11, p. 50

25. Notwithstanding informality of appeal, the contest is sustained, and entry canceled. V. 11, p. 50

26. A timber culture entry will be canceled where it is shown that an agreement of sale has been made, and the land devoted principally to grain to the neglect and exclusion of tree-planting and cultivation . . V. 11, p. 44

27. Though the tract embraced in the timber culture application in question is upon the beach and embraces sandy land, yet, as there are numerous trees in the section, the application is rejected. The character of the land in the whole section must govern. V. 11, p. 280

28. The question of whether land is devoid of timber should be determined by ascertaining whether nature has provided an adequate supply of timber for the wants of persons likely to reside on the land. If there are ten or more acres of timber-producing land in the section, a timber culture entry should not be allowed . . . . . V. 11, p. 234

29. As only about 3,000 small trees are upon the section, a small part being upon the land in controversy, the tract is held to be subject to timber culture entry. . V. 11, p. 24

30. The timber culture act does not require the entryman to do the work in person, nor to reside in the State or Territory where the claim is located. Good cause is shown why the required five acres were not planted in time, etc . . . . . V. 11, p. 199

31. Breaking done in some previous year cannot be deemed a compliance with law by a subsequent entryman who does nothing himself, and makes no use of the previous breaking . . . . . V. 11, p. 313

32. A contest before the local officers may be instituted against a timber culture entry for illegality in its inception, without awaiting instructions from the Commissioner. V. 11, p. 56

33. If eighteen months have elapsed from date of entry, it is not sufficient to allege noncompliance with the law during the first year, but it must be alleged that the proper amount of breaking was not done the first year, nor up to the time the affidavit was executed, or the contest cannot be allowed . . V. 11, p. 55

34. This case was held upon proceedings instituted by the Government, and there is no authority in such case to accept a relinquishment or to cancel an entry without special instructions. . . . . V. 11, p. 82

35. The timber culture law does not require the breaking to be done by the claimant in person. When a neighbor by mistake broke five acres across the line on the timber culture claim, the entryman may adopt such breaking, under the circumstances recited, as his legal breaking, and proceed to cultivate and improve the tract so broken. V. 11, p. 251

36. In view of the timber culture claimant's good faith, the fact that he has but eight and one-half acres, instead of ten, under cultivation and planted as required, should not cause the cancellation of his entry. He is advised of the importance of fully complying with the requirements before making final proof.

V. 11, p. 312

37. There is no valid reason for subjecting a timber culture entryman to contest where the default is cured. So the requisite amount of work is done, no specific mode of cultivation is required . . . . . V. 11, p. 199

38. As failure to cultivate during the seventh and eighth years is shown, the timber culture entry is ordered canceled. As no application to enter was filed, the contestant is allowed a preference right of entry under the act of May 14, 1880. . . . . V. 11, p. 57

39. The preparation of the land and planting of trees are acts of cultivation, and the time actually so employed should be computed as part of the eight years required in timber culture cases . . . . . V. 11, p. 75

40. The object to be attained during the first year by a timber culture claimant, is a thorough overturning of the soil, not in spots, but continuously throughout the prescribed area. It is immaterial whether this object be accomplished by plowing or otherwise.

V. 11, p. 25

41. Where a timber culture entryman, in anticipation of failure to comply with the law, erects a house and cultivates the land, he cannot be allowed a homestead entry on land in the face of a contestant . . . . V. 11, p. 116

42. Because claimant has more than the required number of thrifty, growing trees on his land eight years after entry, is not sufficient reason for making final proof. 3875 trees must have been growing for five years after planting, and the remaining half for four years . . . . . V. 11, p. 298

43. The affidavits filed do not change the proof as to the general character and condition of the trees in this case, and the final proof is rejected, and additional time is allowed . . . . . V. 11, p. 327

44. It is not only the number, but the size of the trees, that meets the requirements of the timber culture law of June 14. 1878.

V. 11, p. 117

45. The final proof in this case is rejected, as the trees described are too small and young.

V. 11, p. 45

46. Where final proof shows the required number of trees to have been cultivated for the statutory period, and that such trees are thrifty, it should not be rejected because the trees, in point of size, fall below a preconceived standard of the size that such trees should reach while under such cultivation.

V. 11, p. 343

47. If at the expiration of eight years from date of entry the timber growing upon a claim is not in a fit condition to meet the requirements of the law, the claimant may be allowed five years' additional time in order to attain the required results, as in this case, notwithstanding the party had 22,600 trees upon his claim . . . . . V. 11, p. 75

Affidavit, 8, 13, 14; Application, 2; Homestead, 7, 47; Practice, 23; Pre-emption, 29; Preference Right, 1.

Timber Lands.

1. In view of the evidence, a proposition to pay stumpage value of the public timber cut and removed is accepted . . V. 11, p. 27

2. A timber land entryman is a preferred claimant against everybody except a prior claimant and the United States. An adverse claim can be initiated only prior to the date of the timber application, and should be filed during the period of publication. . V. 11, p. 8

3. A person who initiates his claim subsequently to the timber application is a preferred claimant, if the United States does not pass its title to the first applicant . V. 11, p. 8

4. Any party may at any time allege illegality in respect of the qualifications or proceedings of the applicant, the *bona fides* of his application, or the character of the land.

V. 11, p. 8

5. The act of June 3, 1878, does not contemplate entries exclusively on land which is *wholly* unfit for cultivation after the timber has been removed, but upon land which is unfit for *ordinary* agricultural purposes.

V. 11, p. 8

6. The burden of proving the character of the land sought to be entered, is upon the timber applicant . . . . . V. 11, p. 8

7. The testimony now presented shows the land involved is subject to entry under the act of June 3, 1878 . . . . . V. 11, p. 158

8. A timber claim under the act of June 3, 1878, will not defeat a prior *bona fide* claim under any law; but, on a proper showing, a prior claim may be declared invalid, and consequently no bar to the timber claim.

V. 11, p. 312

9. Notwithstanding there may be much and valuable timber on a tract, the same is not subject to entry under the act of June 3, 1878, if the soil is a black loam and susceptible of ordinary cultivation, except in minor portions, where it is rocky or steep.

V. 11, p. 13

10. Where a declaratory statement is on file, the land covered thereby is not subject to entry under the timber land act . . V. 11, p. 13

11. A timber entry may be made on land whereon a pre-emption filing has been placed, subject to the pre-emption claim.

V. 11, p. 299

12. The pendency of a "special" timber application, that is, where the character of the land is subjected to investigation before the entry is of record, does not withhold land from further disposition . . . . V. 11, p. 56

13. Time for payment under the act of June 3, 1878, is ninety days, not three calendar months . . . . . V. 11, p. 124

14. Timber land declaration under said act does not withdraw the land from entry, but a homestead entry may be at any time allowed subject to prior rights. A homestead application raises the presumption that the land may not be subject to a timber land application . . . . . V. 11, p. 124

15. It is not the policy of the Land Department to open the public lands to cash purchase through public offering—especially timber lands . . . . . V. 11, p. 299

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Timber Tresspass.

V. 11, pp. 27, 45, 87, 124, 125, 126, 229, 347

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Town-site.

1. Town-sites may be located on mineral lands. The question of priority of occupation must be left to the courts . V. 11, p. 164

2. Where there is a town settlement upon a mineral claim, the clause of reservation should go into the patent. . . . V. 11, p. 164

3 Lands included within a town, and used for trade, are not subject to entry. Platting into lots, blocks, etc., which is duly recorded, is a legal selection, and is sufficient notice of such . . . . . V. 11, p. 318

4. A population of 100 persons is sufficient to entitle an entry of 320 acres. Because improvements are only on a portion of the town-site is no reason why the remainder should be open to settlement. . V. 11, p. 318

5. The incorporation of a town or city will not prevent an entry of lands within the incorporated limits by a successful contestant whose right of entry accrued before such incorporation . . . . . V. 11, p. 202

6. Proceedings in view of recent incorporation of a town-site . . . . . V. 11, p. 140

7. Settlements upon, or attempted occupation for town-site purposes, of land within an Indian reservation, confer no rights. The passage of an act of Congress opening such a reservation gives preference right to actual settlers against a town company, as described, notwithstanding the town may have been incorporated prior to the passage of such act of Congress. Town Companies are not recognized by the laws of Congress, nor of Colorado. Land is reserved for town purposes only in accordance with the number of actual inhabitants. . . . . V. 11, p. 139

8. The town-site lands must be both settled and occupied for town-site purposes to exclude pre-emption or homestead settlement. The question of conflict is not to be decided by the number of inhabitants at date of town-site entry, but at date of the settlement of the adverse claimant. A growing town nearly large enough to include a certain quantity of land may, perhaps, exclude a speculative settlement . . . . . V. 11, p. 139

9. Where two parties settle upon land not subject to settlement because embraced in an Indian Reservation, their legal rights on the termination of the reservation being equal, superior equity will determine their conflicting claim. The earlier settler takes the land in dispute . . . . . V. 11, p. 373

10. A town-site cannot be legally selected within a reservation. The selection in this case, by a few individuals not actual settlers, is not the town-site selection contemplated by law . . . . . V. 11, p. 373

11. Because a pre-emptor settles on the site of a prospective city, he should not be deprived of his land if a city should be thereafter built near him. Nor are pre-emption and homestead claims prohibited near growing ing cities. A re-hearing is refused on the allegations of newly-discovered evidence in this case, of the offering for sale of part of Keith's land in town lots, as such evidence will properly come before the local officers on the taking of final proof . . . . . V. 11, p. 373

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August 7, 1882 (22 Stat. 327). Cost of Surveys. . . . . V. 10, pp. 136, 249, 252
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March 3, 1883 (22 Stat. 487). Alabama Mineral Lands. . V. 10, pp. 36, 54, 55, 104, 135, 240, 267, 294
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LAWS, INSTRUCTIONS, RULINGS AND DECISIONS.

Abandonment.

An applicant for mining patent embracing an abandoned mine is not compelled to prove such, in the absence of an adverse claim. V. 10, p. 322

An additional homestead entry is granted, notwithstanding a contest was initiated for, of the original entry . . . . . V. 10, p. 37

When a soldier may contest for, in case another party homesteads the land embraced in his declaratory statement . . V. 10, p. 92

The testimony fails to show that the homestead claimant has abandoned his claim. V. 10, p. 121

In case a homestead entry embracing an area in excess of 160 acres (the party paying for such excers) is cancelled for relinquishment or, the party to the entry has no claim to the excess in area over 160 acres. V. 10, p. 360

In view of the assertion and denial of, a hearing is suggested before decision is made in the case . . . . . V. 10, p. 260

Where, is proved as a result of contest, the filing of the party in default should be cancelled as to his entire claim, and not merely to the part in controversy . . . V. 10, p. 379

Contest for, is dismissed, as the six months after the authorized leave of absence, under the act of June 4, 1880, had not expired. V. 10, p. 67

Abstract of Title.

Proceedings in case of defective, in an application for mining patent . . . V. 10, p. 206

Actual Possession.—*See Possession.*

Where lands are in the, of a party, who has settled upon, improved and fenced the same, no right thereto can be acquired under the pre-emption laws by another who takes forcible possession . . . . . V. 10, p. 7

Actual Settler.—*See Settler.*

A soldier's additional homestead entry cannot be made upon the land of an, who has asserted his right by a pre-emption filing or homestead entry . . . . . V. 10, p. 5

Additional Entry.—*See Homestead—Soldier.*

Adjudication.—*See Board.*

Adjoining Land.

Land that corners on another tract does not "adjoin" it . . . . . V. 10, p. 127

Residence on, and cultivation of the homestead, is not a compliance with the law. V. 10, p. 70

Administrator.

An, may make entry and final proof for the benefit of the infant children, where homestead settler dies before completing proceedings for making entry . . . . . V. 10, p. 35

The notice of contest, in this case, should have been served upon the several heirs, and not upon the, only . . . . . V. 10, p. 222

Relinquishment of an entry will not be recognized except on proof of proper authority therefor . . . . . V. 10, p. 366

Real estate . . . . . V. 10, p. 186

Adverse Claim.

A town-lot may be the subject of an, to land embraced within a lode application for patent . . . . . V. 10, p. 52

As an, has intervened in a certain timber culture case, a supplemental affidavit cannot be permitted . . . . . V. 10, p. 41

When an, not made under the settlement laws will not lie against a settler in actual possession . . . . . V. 10, p. 193

Where a party seeking to contest an entry files his uncorroborated affidavit, he should be allowed time to amend subject to any intervening. . . . . V. 10, p. 271

Question of residence by a pre-emptor to a non-mineral tract, where no, exists. V. 10, p. 87

Adverse Mining Claim.

Instructions of June 8, 1883 . V. 10, p. 191

The, in this case was sworn to by an attorney and not by the claimant, and was accordingly dismissed. But suit had been commenced by the adverse claimant in court, and, as a large part of the applicant's claim is involved, action in the Land Department is suspended to await the result of the court proceedings . . . . . V. 10, p. 306

Where the agent of an incorporated company signs the, in the usual form as "general manager, agent and attorney in fact," and verifies the same before a notary public, and swears that the company is duly incorporated, further evidence of incorporation and power to hold real estate is not required. V. 10, p. 340

Whatever is fundamental to the possession and right of possession of a mining claim is remitted to the courts; and parties who fail to set up an, to an application regularly made cannot protect their rights by a protest submitted to the Land Department. V. 10, p. 102

An, must be filed within sixty days, not sixty-three days as heretofore. . V. 10, p. 339

Parties who failed to file an, and commence suit seasonably, thereby admit that they have no right to the disputed property, and they cannot afterwards be heard to show legal or equitable title in themselves to the ground. V. 10, p. 392

A party who delays filing his, to a mining application until the last few days of the statutory period, then trusts to the clerk of the

court to do the things he ought to do personally, has no remedy before the Department if the said clerk is absent from his office or fails to commence the required suit . V. 10, p. 307

Where suit has been commenced on an, local officers should not receive from the adverse claimant an application for patent for the ground in conflict. . . . . V. 10, p. 192

A waiver of a suit commenced on an, must become effective how . . . . . V. 10, p. 51

A patent for a mining claim will not issue while a suit is pending in court involving the right of possession to the land, notwithstanding the, filed in the land office has been dismissed for irregularity. . . . . V. 10, p. 322

An applicant for mining patent who, a co-owner, relocated a mine in his own name, as single proprietor, is not obliged to show title back of such re-location; but if the proceedings are otherwise regular, and his former co-owners or other parties fail to assert an, patent may issue in the applicant's name.

V. 10, p. 119

Adverse Mining Claimant.

An, who secures judgment may apply for patent without waiting for appeal to a higher court. . . . . V. 10, p. 167

Proceedings where the, is successful in court and desires patent for his land.

V. 10, p. 207

Where an, files a plat made from the field-notes of applicant's survey, and the location certificates of the adverse claims certified by U. S. Deputy Surveyor with an explanation that an actual survey is not practicable, such plat is held sufficient . . . . . V. 10, p. 340

Adverse Possession.—*See Possession.*

Real estate. . . . . V. 10, p. 186

Affidavit.—*See Evidence—Proof—Testimony.*

Non-mineral, not required in Alabama.

V. 10, p. 55

The, required by the second section, act of June 15, 1880, may be outside the land district before any qualified officer having seal.

V. 10, p. 294

The filing of a preliminary, under act of June 3, 1878, does not prevent a homestead entry subject to the rights of the timber claimants . . . . . V. 10, p. 198

The filling in of a date in a blank form by an attorney as described, is immaterial and does not affect the validity of the.

V. 10, p. 356

Informalities in, of contest can only be taken advantage of on the day set for hearing, and then only by a party to the record; if not thus taken advantage of, the informalities are considered waived. If objection is made the, may be amended or the motion allowed . . . . . V. 10, p. 272

The omission of date in, of contest is not material. The allegations in the affidavit as set forth are full and sufficient . V. 10, p. 380

An, stating whereabouts of an entryman as unknown, is not sufficient basis for publication of notice alone . . . . . V. 10, p. 86

The official report of the Register that notice was given will be accepted in preference to the, of an interested party . V. 10, p. 233

Required to secure continuance.

V. 10, p. 166

As the final proof and, of this pre-emptor were made before a clerk of court outside the land district, his case will be submitted to the Board . . . . . V. 10, p. 41

The required, in a timber culture application may be sworn to before the filing of the township plat . . . . . V. 10, p. 399

How timber culture, is made when a county embraces land in two districts . V. 10, p. 74

As an adverse claim has intervened in a certain timber culture case, a supplemental affidavit cannot be permitted . . V. 10, p. 41

An, made as the basis of an entry while the land is under appropriation by a timber culture entry cannot be received. V. 10, p. 41

Agent.—*See Attorney.*

The, of a railroad company may contract for ties to be cut from the public lands, but such ties cannot be sold by the company to other parties . . . . . V. 10, p. 20

Where the, of an incorporated company signs the adverse claim in the usual form as "general manager and attorney in fact" and verifies the same before a notary public, and swears that the company is duly incorporated, further evidence of incorporation and power to hold real estate is not required. V. 10, p. 340

Five rules are laid down, which recognize a deserted wife or child as the absent husband's . . . . . V. 10, p. 360

Agreement.

A prior right by virtue of a contest, may be waived in part by an amicable agreement; such agreement should be respected where it settles a controversy like the one in this case, and should not be overthrown because of a technical violation of a Rule of Practice.

V. 10, p. 398

Agricultural Colleges.

Amending act of July 2, 1862, donating lands for . . . . . V. 10, p. 30

Agricultural Land.

Character of, must be shown after it has been returned as mineral, before entry is allowed . . . . . V. 10, p. 87

A mineral application cannot be received for land covered by a homestead entry until when . . . . . V. 10, p. 169

As the land in question was returned as agricultural, and has never been withdrawn as mineral land, the burden of proof is upon the placer claimant . . . . . V. 10, p. 293

After lands had been set apart and designated as, they were *prima facie* of that character and the burden of proof is upon him who traverses such character . V. 10, p. 307

The burden of proof where land is returned as, is upon the mineral claimant and he must show not that land in the neighborhood is mineral, and theoretically the land in dispute must contain mineral; but that actually it does produce mineral . V. 10, p. 309

The mineral claimant's duty is to show the non-agricultural character of the land, as well as its value for minerals. He must also prove that it is more valuable for mining than for agricultural purposes . V. 10, p. 307

The testimony adduced as to its mineral character is not satisfactory. The testimony as to its agricultural character is meagre; but similar lands in the immediate vicinity produce valuable crops . . . . . V. 10, p. 293

Unusual court and land office proceedings involving character of certain land. V. 10, p. 191

Alabama.

Act excluding lands in, from mineral entry. V. 10, p. 30

Instructions as to mineral lands in. V. 10, p. 54

Entries of mineral lands in, allowed on or since March 3, 1883. are void . V. 10, p. 55

Act of March 3, 1883, does not confirm a homestead entry on coal lands in. V. 10, p. 226

Lands in, containing coal and iron must be offered except when . . . . . V. 10, p. 55

The act of March 3, 1883, touching, confers no rights except in entries already made. All lands heretofore reported as containing coal and iron that appear on the official records as vacant are subject to public sale, etc. V. 10, p. 104

Unauthorized settlement on mineral lands in, is not protected by act of May 14, 1880. V. 10, p. 55

Coal lands in, are excepted from the provisions of the act of June 15, 1880. V. 10, p. 226

Coal lands in, considered and cash entry allowed to stand . . . . . V. 10, p. 293

In view of the relinquishment of the prior homestead entry in, the tract in question must be offered at public sale. . . . V. 10, p. 240

Lands not valuable for minerals, as herein, should not be offered at public sale, under the act of March 3, 1883. . . . . V. 10, p. 135

Settlement on mineral lands in, for purpose of homesteading, cannot avail . . V. 10, p. 55

Non-mineral affidavit not required in. V. 10, p. 55

The court referred to in Sec. 2294 R. S. is the, Circuit Court . . . . . V. 10, p. 229

Alien.—*See Citizenship—Naturalization.*

Upon what conditions an, is allowed to make entry of public lands. . . V. 10, p. 405

An, can claim nothing by a settlement prior to his declaration to become a citizen. V. 10, p. 326

The applicant in this case is still an, notwithstanding his father's declaration of citizenship . . . . . V. 10, p. 305

The daughter of an, who, after filing his declaration of intention, died before taking out final papers, is deemed a citizen upon taking the prescribed oath. . . . V. 10, p. 19

Heirs may purchase under Act of June 15, 1880 . . . . . V. 10, p. 90

Altmann, Marzel.

Act for relief of. . . . . V. 10, p. 31

Alum.

A hearing is ordered to determine whether an exception should be made in favor of lands containing oil claims similar to the exception in favor of lands containing, borax, etc. V. 10, p. 307

Amendment.

An, cannot exclude intervening rights. V. 10, p. 365

Homestead entry may be amended to embrace a contiguous lot not included through error of local officers . . . . . V. 10, p 208

Effect where a party homesteads one tract of land and settles on another tract, but does not apply to amend the entry until after a valid adverse right has intervened. V. 10, p. 227

Only sixty days are allowed to perfect. V. 10, p. 190

Certain application for, of homestead is denied. . . . . V. 10, p. 34

The, of a homestead is allowed in certain cases . . . . . V. 10, p. 34

A party who applies to amend his timber-culture entry cannot be allowed to embrace a tract entered by another timber culture claimant who has no notice of the prior party's intention to claim the land. The first party may be allowed to take some other tract, or have the money paid as fees and commissions refunded . . . . . V. 10, p. 152

As other entries cover the land included by the proposed, of entry, the application for, is denied; but in view of the equities involved, the original timber culture entry is cancelled and a new one is permitted, with credit for existing payments . . . . . V. 10, p. 106

Where a party seeking to contest an entry files his uncorroborated affidavit, he should be allowed time to amend, subject to any intervening adverse claim . . . . . V. 10, p. 271

In view of the manifest irregularity of procedure, this case is classed within the category of exceptions to the general rule laid down in Owen *vs.* Russell. . . V. 10, p. 400

Annual Expenditures.—*See Expenditure.*

Where several mining claims are held in common, the required, may be made upon any one of them, but must be for the purpose of developing all claims. . . . V. 10, p. 369

Appeal.

Does not lie from an interlocutory order. V. 10, p. 166

Four exceptions stated that failure to, from local officers' decision becomes final. V. 10, p. 34

Rights lost by failure to, from local officers' decision cannot be restored by an appeal to the Interior Department . . . . V. 10, p. 34

Notwithstanding failure of homestead claimant to, from local officers' decision rejecting part of his homestead within a railroad grant, the claim is allowed the heirs after an elapse of eleven years. . V. 10, p. 56

Thirty days allowed from receipt of notice of decision by the local officers, and ten days additional for transmission of notice and. V. 10, p. 86

Where a hearing is held based upon allegations of a pre-emptor's bad faith, and the party, though notified, fails to appear or to, from the adverse decision of the local officers, repayment of purchase money will not be allowed on the ground that the testimony at such hearing fails to establish bad faith. V. 10, p. 126

A stranger to a case has no right of.
V. 10, p. 3
Reg. and Rec. must report if, have or not been taken. . . . . V. 10, p. 190
In case of, points of exception must be stated . . . . . V. 10, p. 338
Where a party protests against the local officer's order that the preference right of entry or contest shall be awarded to the highest bidder, and, instead of appealing therefrom, bids and pays his money for such right, he cannot recover it . . . . . V. 10, p. 330
The date of notice of a decision issued from the local office should be the date from which the time for, should begin to run, and not the date when the Washington attorney was notified. . . . . V. 10, p. 269
The wrong advice of the Register cannot be accepted as an excuse for non-compliance with law. If the officer refused to accept the application, the applicant should have appealed . . . . . V. 10, p. 315
Where the Government's interests are involved, as in a question of the character of land, should be allowed even if one of the claimants be in default as to the time of taking . . . . . V. 10, p. 307
Where the decree disposes of the matter in question, though not conclusive of the case, it is subject to. . . . . V. 10, p. 269
Does not lie from a report by the Surveyor-General in a private land claim in New Mexico. . . . . V. 10, p. 216
In the Commissioner's discretion, may be allowed in anomalous and exceptional cases.
V. 10, p. 190
The ordering of a hearing on allegations of fraud is a matter of discretion with the Commissioner of the General Land Office, and cannot be the subject of . . V. 10, p. 290
The Commissioner's refusal to order a hearing, if it amounts to the denial of a right, may be appealed from to the Secretary of the Interior. . . . . V. 10, p. 105
The right of, to the Secretary is allowed only to interested parties. . . . . V. 10, p. 3
Under Rule 93 of the Rules of Practice in land cases, a copy of notice of, and specifications of error and argument are not required to be served on the opposite party when the, is taken to the Commissioner from the decision of the Register and Receiver.
V. 10, p. 118
Motion for review denied, the want of, having arisen from non-action of Carland's attorney or non-receipt at the local office of his specifications of error . . . . . V. 10, p. 40
In certain U. S. Courts considered.
V. 10, p. 201
An adverse mining claimant who secures judgment may apply for patent without waiting for, to a higher court . . . V. 10, p. 167

Applicant for Mining Patent.

Is not bound to note conflicts with unofficial surveys, on plat or field notes . . V. 10, p. 69
An, who, a co-owner, relocated a mine in his own name, as single proprietor, is not obliged to show title back of such re-location.
V. 10, p. 119
Proof required where an, seeks to embrace a portion of the surface ground already patented or applied for with a placer claim.
V. 10, p. 119
An, embracing an abandoned mine is not compelled to prove such abandonment in the absence of an adverse claim . . V. 10, p. 322
An, for a lode claim within a patented placer claim must show affirmatively the existence of such mine and its true location, and prove his possessory right and value of work performed. . . . . V. 10, p. 150
May contract with any U. S. deputy surveyor for the field work in making the necessary survey. The office work must be done by the Surveyor-General. . . . V. 10, p. 272

Applicants.

Caution to homestead, pre-emption or timber culture. . . . . V. 10. p. 40
Where a contest is ended by relinquishment, the land becomes public land, subject to entry by the first rightful . . . V. 10, p. 2

Application.

Where a party believes that, as a settler, he had a better right to the tract than the entryman, he should imtiate contest by filing his, within the period prescribed by law.
V. 10, p. 271
Part of which has been entered, should be rejected . . . . . V. 10, p. 310
An, irregular in form is equivalent to no.
V. 10, p. 231
Instructions as to alterations in an.
V. 10, p. 37
Where a protestant alleges that portion of the applied-for premises is not subject to certain, the Land Department has jurisdiction.
V. 10, p. 51
Certain railroad land which was temporarily reserved, pending a pre-emption application for the tract, passed to the company upon rejection of the . . . . . V. 10, p. 95
Erroneous in form, afterwards corrected, should take effect from the date when first received at the local land office . V. 10, p. 226

Application for Mining Patent.

Instructions of June 8, 1883 . V. 10. p. 191
A mineral application cannot be received for land covered by a homestead entry until when . . . . . V. 10, p. 169
Certain lands were patented to the State under the internal improvement grant. Placer claims were thereafter located thereon, rejected, and proceedings in the court suggested.
V. 10, p. 292
Proceedings where claimants fail to file adversely to a placer, which embraces their lode claim . . . . . V. 10, p. 18
Where two applications conflict, the senior may relinquish and junior proceed with ground in conflict . . . . . V. 10, p. 167
Proceedings in case of defective abstract title in an . . . . . V. 10, p. 206
If notice and diagram in an, were conspicuously posted upon the claim as located, but on a part excluded because of conflict, the posting is sufficient . . . . V. 10, p. 256
A mining applicant having a discovery shaft within the public land excepted from a

patented lode claim, cannot make a valid location with part of his claim non-contiguous and separated by land held and owned by others by virtue of a patent . . V. 10, p. 306

Entry on certain, containing more than one lode may be allowed . . . . . V. 10, p. 306

No objection to allowing entry of two or more lode claims in one application, made prior to circular of July 6, 1883 .V. 10, p. 322

One making, is required by law to put on the premises notice thereof. The courts will presume such notice given, which notice is of itself a warning to all that the parties are about applying for patent seeking to obtain title . . . . . V. 10, p. 110

Where suit has been commenced on an adverse mining claim, local officers should not receive from the adverse claimant an, for the ground in conflict . . . . . V. 10, p. 192

A town lot may be the subject of an adverse claim to land embraced within an, for a lode . . . . . V. 10, p. 52

Appropriation Laws.

Legislative, Executive and Judicial. V. 10, p. 30

To supply deficiencies . . . V. 10, p. 31

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When a section attached to an, becomes a permanent law until repealed . V. 10, p. 196

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Survey of confirmed private land claims in. V. 10, p. 48

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How, is locatable . . . . . V. 10, p. 387

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Definition of, in repayment cases. V. 10, p. 58

The filing of a qualified coal party who sold to an, qualified at date of entry, should not be cancelled . . . . . V. 10, p. 255

Assignment.

How the grant to a certain railroad is affected by an, to another company.V. 10, p. 75

Real estate . . . . . V. 10, p. 82

Attorney.—*See Agent—Power of Attorney.*

Right and duties of, before the executive departments . . . . . V. 10, p. 354

Of record in cases cannot as Notaries Public administer oaths in those cases. V. 10, p. 222

An, disbarred from practice is not prevented from exercising the duties of Notary Public . . . . . V. 10, p. 254

The Land Department does not adjust difficulties between parties to a case or between them and their, nor to inquire into the conduct of such, towards their clients. V. 10. p. 295

The date of notice of a decision issued from the local office should be the date from which the time for appeal should begin to run, and not the date when the Washington, was notified . . . . . V. 10, p. 269

An, or other person who has not entered an appearance in a contest case, or who has no direct interest therein, cannot inspect papers in such cases . . . . . V. 10, p. 222

Parties n interest or their, may take copies of papers and documents filed with cases under proper rules and supervision. V. 10, p. 270

Where there are two witnesses to the affidavit initiating contest, one of whom is an, in the case, the contest should not be dismissed, as one witness is enough . . . V. 10, p. 272

Where a party acting on the word of his, neglects to initiate legal proceedings, he has no remedy . . . . . V. 10, p. 190

The filling in of a date in a blank form by an, as described, is immaterial, and does not affect the validity of the affidavit. V. 10, p. 356

All official letters should be addressed to the officers having charge and not to individuals or . . . . . V. 10, p. 34

The adverse claim in this case was sworn to by an, and not by the claimant, and was accordingly dismissed. But suit had been commenced by the adverse claimant in court, and as a large part of the applicant's claim is involved, action in the Land Department is suspended to await the result of the court proceedings . . . . . V. 10, p. 306

The evidence presented fails to show cause for declining to recognize the prior, of the homestead claimant . . . . . V. 10, p. 68

The certificate in this case must be delivered to the deceased soldier's, and not to the widow's . . . . . V. 10, p. 257

An, acting under a power as described, may delegate his authority directly to a second person, but not indirectly through the medium of some other person. The second, of record cannot utilize the proof filed by the first, but he must procure and file the required evidence himself . . . . . V. 10, p. 362

Blackfeet Indian Agency.

How this tract will be disposed of. V. 10, p. 43

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A purchase of land after certificate erroneously issued has been located, may be referred to the . . . . . V. 10, p. 394

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The official, of Registers are not liable for breach of private trust by their principals. V. 10, p. 86

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A hearing is ordered to determine whether an exception should be made in favor of lands containing oil claims, similar to the exception in favor of lands containing alum, etc. V. 10, p. 307

Boundary.

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How the, of a private land claim should be adjusted where the call is for the sea or bay. V. 10, p. 176

Breaking.—*See Timber Culture.*

In view of the excuses of the timber culture claimant for not doing the required, of five acres during the entire year allowed him, and his good faith notwithstanding an error in judgment, the contest is dismissed. V. 10, p. 275

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Act for relief of . . . . . V. 10, p. 31

Burden of Proof.—*See Proof.*

After lands had been set apart and designated as agricultural land, they were *prima facie* of that character, and the, is upon him who traverses such character . . V. 10, p. 307

The, where land is returned as agricultural is upon the mineral claimant, and he must show not that land in the neighborhood is mineral, and theoretically the land in dispute must contain mineral, but actually it does produce mineral . . . . . V. 10, p. 309

As the land in question was returned as agricultural, and has never been withdrawn as mineral land, the, is upon the placer claimant . . . . . V. 10, p. 293

A hearing is ordered to allow the pre-emptor an opportunity to show affirmatively the validity of certain pre-emption filings. V. 10, p. 154

In view of the testimony and the, the land is awarded to the defendant . . V. 10, p. 71

Butte Town-site Patent.

The provision in the, was authorized by Sec. 2392, U. S. Revised Statutes, and was properly inserted in the patent . V. 10, p. 134

California.

Appropriation for Surveyor-General of. V. 10, pp. 30, 47

Appropriation for surveying private land claims in . . . . . V. 10, p. 31

Valentine scrip is not locatable on lands within an Indian reservation whose status is like the Klamath River Reservation. V. 10, p. 59

Certain lands embraced within the Creighton Survey, pass to the State . . V. 10, p. 23

The State of, can receive indemnity only once for the same school section, notwithstanding the act of July 23, 1866. V. 10, p. 128

California Private Land Claims.

Reservation of public lands created by law, not by the will of individuals. Lands reserved for, are lands claimed as provided by the act of 1851. Claims afterward set up to include other lands are not recognized as working a reservation of the additional land. V. 10, p. 333

The right to a patent for a, only inheres in a claimant from the time when a final decree of confirmation is obtained. No action in this case can be taken until such a decree is obtained . . . . . V. 10, p. 402

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Cash entry of husband held for, in view of the benefit in the homestead allowed a deserted wife . . . . . V. 10, p. 92

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An assignee in repayment cases is one who purchases the land involved after entry and prior to . . . . . V. 10, p. 58

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Certificate of Purchase.

A, issued for land which was not public land and had not been surveyed by the United States is void . . . . . V. 10, p. 160

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A patent is not necessary to vest title in a certain railroad company, but title vests by virtue of the grant, and the act of, to the State. V. 10, p. 243

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What is meant by the "grounds" upon which, may be allowed . . . . V. 10, p. 88

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Citizen.—*See Alien.*

The daughter of an alien who, after filing his declaration of intention, died before taking out final papers, is deemed a, upon taking the prescribed oath . . . . . V. 10, p. 19

Having become a, a former alien is allowed to make a second timber culture entry, with credit for fee and commissions paid on his canceled entry. . . . . V. 10, p. 260

Citizenship.—*See Naturalization.*

A filing and settlement before declaration of, are of no legal effect. But where no adverse claim intervenes prior to declaration of, and a subsequent settlement, the original filing should not be canceled . . . . V. 10, p. 257

The record evidence of intention to become a citizen may be supplied at any time prior to final disposal of land . . . . . V. 10, p. 212

A declaration of, cannot have a retroactive effect to qualify as a preëmptor an alien at date of settlement . . . . . V. 10, p. 274

Alien-born applicants must furnish record proof of the same to accompany their application and affidavit . . . . . V. 10, p. 104

Final proof by the minor child of a deceased entry man who was unnaturalized at date of death . . . . . V. 10, p. 192

Clerk.

A, or Register or Receiver, but not a special agent, may make a timber culture entry in a district other than the one in which he is located . . . . . V. 10, p. 232

A, *de facto* in the office of the Register, with the Register's knowledge and sanction, is competent to receive applications and give them legal effect . . . . . V. 10, p. 134

Clerk of Court.

As the final proof and affidavit of this preemptor were made before a, outside the land district, his case will be submitted to the Board. . . . . V. 10, p. 41

How final proof may be made where a county is in two land districts . V. 10, p. 169

Only when a court is appointed for the county will the clerk thereof have full power to take final proof in land cases. V. 10, p. 344

The Act of June 9, 1880, requires that affidavits, when not sworn to before either of the local officers, shall be sworn to before the, clerk of the county court or any court of record, etc. This affidavit was sworn to before the Probate Judge. If he is *ex officio* clerk of his own court, that statement should follow his signature to the jurat. . . . V. 10, p. 105

Final proof in homestead entry and pre emption entry may be made before a, at his office, notwithstanding no court may be held in his county . . . . . V. 10, p. 310

Certain, in Dakota are authorized to take final affidavits in homestead and preëmption cases. . . . . V. 10, p. 390

Coal.

Is a mineral . . . . . V. 10, p. 54

School sections containing, are subject to disposal as mineral lands . . . V. 10, p. 54

Entries of, may be made on school sections in the Territories . . . . . V. 10, p. 225

Where, exists, timber needed in mines should not be cut for fuel . . . V. 10, p. 172

Coal Lands.—*See Alabama.*

The Act of July 28, 1882, is held not to apply to . . . . . V. 10, p. 341

An entry of, by qualified stockholders is not invalid, because some time during litigation, stock was owned by a disqualified person . . . . . V. 10, p. 207

Where, are entered by a corporation, every stockholder must be qualified at date of entry. Because one stockholder, who sold his stock prior to entry was disqualified at date of application, is not cause for canceling the entry. V. 10, p. 255

The wording, "within fifteen miles of a completed railroad," is not limited to an accessible railroad. Notwithstanding a suspension of the lands from entry whereby the claimants could not make proof and payment until a railroad was finished past the lands in question, the entry price of, is $20 an acre. V. 10, p. 341

Certain lands in Pueblo land district withdrawn as . . . . . V. 10, p. 254

Real estate . . . . . V. 10, p. 186

Colorado.

Appropriation for Surveyor-General of. V. 10, pp. 30, 47

Correction of boundaries of the Gunnison land district . . . . . V. 10, p. 47

Lands in Hot Springs Reservation, Uncompahgre Park, are not subject to settlement. V. 10, p. 58

Under the mining laws of the United States and those of, a mining claim cannot be relocated so as to embrace ground claimed and possessed by others under color of law. V. 10, p. 392

Commissioner of the General Land Office.

Proceedings in contests in States where the, is *ex officio* Register and Receiver. V. 10, p. 67

Two separate cases should not be forwarded to the Secretary by the, under one letter of transmittal . . . . . V. 10, p. 67

Secretary has no power to compel the, to deliver unrecorded or undated patent. V. 10, p. 26

The, is the auditing officer of the public land service, and he may disallow an item in the ordinary expenditures of a Surveyor-General's office. Extraordinary expenditures should first be submitted for his approval before they are incurred. . . . . V. 10, p. 404

Commissions.—*See Fees.*

The practice of allowing parties making a homestead or timber culture entry credit for the fee and, paid by them on a canceled prior entry is discontinued . . . . . V. 10, p. 306

A party who applies to amend his timber culture entry cannot be allowed to embrace a tract entered by another timber culture claimant who has no notice of the prior party's intention to claim the land. The first party may be allowed to take some other tract, or have the money paid as fees and, refunded. V. 10, p. 152

Commutation.

Instructions in cases of, of homestead. V. 10, p. 39

How a homestead entryman may give notice of . . . . . V. 10, p. 35

Contest.—*See Evidence—Hearing—Preferred Right.*

When a pre-emptor publishes notice of intention to make final proof, the appearance of an opposing claimant who shows his own superior right and the pre-emptor's non-compliance with law does not constitute a. V. 10, p. 365

Review of the law and practice governing homestead contests . . . . . V. 10, p. 224

Proceedings in, in States where the Commissioner is *ex officio* Register and Receiver. V. 10, p. 67

A prior settler may initiate a, against an entryman . . . . . V. 10, p. 231

Between pre-emptors to clear the record should not be permitted unless in exceptional cases . . . . . V. 10, p. 364

A, against a pre-emption filing is not recognized . . . . . V. 10, p. 195

The pendency of an illegal, is no bar to the statutory right of a third person to make entry and institute a proper, on the failure of the former entryman to comply with the law, especially in this case, where the dismissal of the illegal, was requested by the contestant himself . . . . . V. 10, p. 376

In initiating a, against a homestead entry, the contestant need not make application to enter . . . . . V. 10, p. 290

The omission of date in affidavit of, is not material. The allegations in the affidavit, as set forth, are full and sufficient. V. 10, p. 380

A second, cannot be initiated until the first one is properly ended . . . . V. 10, p. 289

Money deposited to meet the expenses of a, should not be refunded until the, is finally determined, only the balance unexpended should then be returned . . . . . V. 10, p. 289

Where a party believes that as a settler he had a better right to the tract than the entryman, he should initiate, by filing his application to enter within the period prescribed by law . . . . . V. 10, p. 271

A second, cannot be initiated against an entry until the first, has been finally adjudicated, except where such first, is illegal in its inception . . . . . V. 10, p. 270

Where a party makes a fraudulent entry, a, may be ordered at any time to defeat such fraud . . . . . V. 10, p. 269

A, on other grounds or by a different party should not be allowed while an application to, is pending . . . . . V. 10, p. 350

Where a qualified party desires to make both a homestead entry and a timber culture entry, he may commence, against two timber culture entries . . . . . V. 10. p. 107

A, by a divorced wife against her absent husband's homestead entry, how treated. V. 10, p. 19

In the absence of papers required to initiate a, one cannot be assumed . V. 10, p. 190

Where a party protests against the local officer's order that the preference right of entry or, shall be awarded to the highest bidder, and instead of appealing therefrom, bids and pays his money for such right, he cannot recover it . . . . . V. 10; p. 330

Notice of, must be signed by one or both of the local officers . . . . . V. 10, p. 222

Notice of, cannot be served personally, nor on the superintendent of an insane asylum where the insane claimant is confined. V. 10, p. 374

The notice of, in this case should have been served upon the several heirs, and not upon the administrator only . . V. 10, p. 222

An affidavit stating whereabouts of an entryman are unknown, is not sufficient basis for publication of notice alone in a, case. V. 10, p. 86

Where a party seeking to, an entry, files his uncorroborated affidavit he should be allowed time to amend, subject to any intervening adverse claim . . . . . V. 10, p. 271

Where there are two witnesses to the affidavit initiating, one of whom is an attorney in the case, the, should not be dismissed, as one witness is enough . . . . V. 10, p. 272

Informalities in affidavit of, can only be taken advantage of on the day set for hearing, and then only by a party to the record; if not thus taken advantage of the informalities are considered waived. If objection is made, the affidavit may be amended or the motion allowed . . . . . V. 10, p. 272

A motion for withdrawal of, whether verbal or written, at or before the day of trial, is only an interlocutory proceeding, and will be decided on the day of the trial V. 10, p. 289

Proceedings where a, is believed to have been withdrawn for a consideration, or for speculative purposes . . . . V 10, p. 206

The motion of a stranger to the record in case of, should not be accepted. V. 10, p. 272

A contestant failing to appear at the hearing forfeits his rights of . . . . V. 10, p. 49

Where a, is ended by relinquishment, the land becomes public land subject to entry by the first rightful applicant . . . . V. 10, p. 2

If a, is impro erly brought, the cancellation of the entry, on the relinquishment's presentation, gives no preference right, and the first legal applicant takes the land involved. V. 10, p. 375

A relinquishment after, has closed can have no effect . . . . . V. 10, p. 212

In the event of a legal, pending when the relinquishment is filed, the preference right of entry inures to the contestant, if the relinquishment is directly or constructively the result of such . . . . . V. 10, p. 375

A relinquishment does not open land to pre-emption entry until filed; if then a legal, and application to enter are pending, the contestant on the successful termination of the, has a preference right of entry . V. 10, p. 591

An application to, made after a certain relinquishment, should be dismissed. V. 10, p. 2

An attorney or other person who has not entered an appearance in a, case, or who has no direct interest therein, cannot inspect papers in such cases . . . . . V. 10, p. 222

An adverse decision based on a previous, should not affect a case based upon matters subsequent to such decision . . V. 10, p. 356

Witnesses to a land office, are not summoned, nor is a subpœna issued. The question of paying fees to witnesses is one that does not concern the local officers. V. 10, p. 271

After a judgment has been rendered by the Superior Court following the reference thereto of a, to purchase land from the State, the Surveyor-General is bound to obey such judgment. V. 10. p. 163

A pre-emptor may settle on land covered by a homestead declaratory statement and file his pre-emption declaratory statement. After the homestead party has made entry, the pre-emptor is not deprived of his privilege of making proof and payment because of a third party's, against the said homestead entry. V. 10, p. 153

In, between townsite claimants and private entries for lands selected, but not actually occupied as a townsite, the number of the inhabitants of the town at date of private entry determines the question of priority of right. V. 10, p. 155

For abandonment is dismissed because the six months after the authorized leave of absence under act of June 4, 1880, had not expired . . . . . V. 10. p. 67

Decisions relating to, involving land transferred to a new office, should, when received at the old office, be promply forwarded to the new . . . . . V. 10, p. 270

An additional homestead entry is granted notwithstanding a, was initiated for abandonment of the original entry . . . V. 10, p. 37

In a, the question whether a party made application for the land in dispute in time is of importance . . . . . V. 10, p. 310

A settlement is an appropriation of land, and subsequent homestead entry is subject to the settler's compliance with law. The entry appropriates it against the world, except the prior settler. The assertion of the settler's claim initiates a. The burden and expense of proof is upon the entryman. The settler's application to transmute must be received, and the entryman given an opportunity to show cause why it should not be permitted. V. 10, p. 312

The contestee, under the act of June 15, 1880, has the right to purchase at any time before the cancellation of his entry. Notice before, of such intention is not necessary. V. 10, p. 122

Objections to the admission of certain court transcripts and certain depositions considered. V. 10, p. 212

It is competent for a party contesting a homestead entry to show that the entryman, who claimed the benefit of the act of June 4, 1880, on account of the loss of his crop, did not in fact meet with the alleged loss. V. 10, p. 362

In view of the evidence, the land in question is held to be non-desert in character. The evidence further shows that no effort to reclaim or irrigate the land was made prior to initiation of contest . . . . . V. 10, p. 109

Vexatious and irrelevant cross-examination

and testimony, intended solely to create expense should be stopped by the local officers.
V. 10, p. 223

There is nothing obligatory in Rule 35. Registers and Receivers must exercise their discretion in permitting testimony in contested cases to be taken elsewhere than at the local land office . . . . . V. 10, p. 119

When a soldier may, for abandonment in case another party homesteads the land embraced in his declaratory statement.
V. 10, p. 92

Where an illegal, against a timber culture entry is pending, another, by another party may be initiated against the same entry.
V. 10, p. 212

Practice Rule 1 allows the initiation of, against alleged abandoned or forfeited homestead entry or timber culture entry by any person whether in interest or not, but in all other cases (including pre-emptions), only by a party in interest. In view of the irregular hearing in this case, the contestant acquired no rights, and the timber culture entry after relinquishment of a pre-emption claim by the contestee is allowed to stand . . V. 10, p. 298

Where a party contesting a timber culture entry failed to make a formal written application to re-enter the land, but made a *verbal* application to do so, which was refused by the Register, the, was held to be lawfully commenced, and the contestant entitled to the preference right to re-enter the land.
V. 10, p. 122

In view of the excuses of the timber culture claimant for not doing the required breaking of five acres during the entire year allowed him, and his good faith notwithstanding an error in judgment, the, is dismissed.
V. 10, p. 275

Where a pre-emptor seeks to, a timber culture entry, such attempted, confers no preference right, and is no bar to a subsequent, properly initiated by a homestead or timber culture applicant . . . . . V. 10, p. 349

The charges in affidavit of, against a timber culture entry must be specific as to quantity.
V. 10, p. 380

If a timber culture claimant is not in default as to the whole amount of breaking required at the time affidavit of, is filed, the entry should not be declared forfeited.
V. 10, p. 124

A prior right by virtue of a, may be waived in part by an amicable agreement, such agreement should be respected where it settles a controversy like the one in this case, and should not be overthrown because of a technical violation of a Rule of Practice.
V. 10, p. 398

Acts done or omissions by the timber culture claimant since date of initiating, have no bearing on contestant's rights . V. 10, p. 196

Against a timber culture entry made under the Act of 1874, must be judged by the Act of 1878 when . . . . . V. 10, p. 196

The timber culture entry of Trusdle is allowed, subject to the preëmption filing of Watson. . . . . V. 10, p. 123

Where abandonment is proved as a result of, the filing of the party in default should be canceled as to his entire claim, and not merely the part in controversy . . V. 10, p. 379

Continuance may be demanded when.
V. 10, p. 166

Contest Affidavit.

A, against a timber culture entry is insufficient, if it does not allege that the failure complained of exists at the present time.
V. 10, p. 399

Contestant.

Discussion of the question how far a, in his entry, is restricted to the land in contest.
V. 10, p. 290

A, cannot shorten the thirty days period of reservation by withdrawing or relinquishing his preference right . . . . . V. 10, p. 42

Cancellation of prior entry at the local office determines when entry of, may be made, not when the right of entry attached.
V. 10, p. 324

A, acquires no right until an entry is cancelled . . . . . V. 10, p. 104

Settlement and entry may be made by a stranger in this case, subject to the preference right of . . . . . V. 10, p. 93

Effect of withdrawing at or before the time fixed for trial. . . . . V. 10, p. 67

Proceedings where A made prior settlement and B was the successful . . . V. 10, p. 193

Owing to insufficient notice and absence of application to enter by, the contest in this case is dismissed. . . . . V. 10, p. 271

Right of entry by, attaches, when the judgment in his favor becomes final, either of the local officers or on appeal. The right of purchase by the entryman or his transferee may be exercised at any time before such judgment becomes final . . . . . V. 10, p. 324

A relinquishment may be an independent transaction, and not evidence in favor of, when the land will be open to the first legal applicant . . . . . V. 10, p. 258

While a homestead entry remains uncanceled, another entry of any kind cannot be allowed. . . . . V. 10, p. 104

In view of the testimony, the soldier's homestead entry of McElrath, late Receiver at Miles City, Montana, is ordered canceled, notwithstanding withdrawal of . V. 10, p. 311

A homesteader whose entry was about to be contested, relinquished and made a timber culture entry of the land. The, having settled upon the land prior to relinquishment is entitled to make a homestead entry, and the timber culture entry is held for cancellation, with credit for fees or repayment if desired.
V. 10, p. 107

No preference right is acquired by a, who alleges and proves fraud in the initiation of a timber culture entry . . . . . V. 10, p. 350

Timber culture entry by another party may be allowed within the thirty days granted, within which to enter, subject to contestant's preference right. . . . . V. 10, p. 93

The, in a timber culture case must show himself qualified to make entry of the tract, except when . . . . . V. 10, p. 42

While upon relinquishment of a timber culture entry, the land is subject to entry by a qualified party, such right may be subject to the right of another party who has duly contested and procured the cancellation of the entry. . . . . V. 10, p. 258

Prospective inability of a timber culture claimant to prove up gives no rights to a. V. 10, p. 170

Continuance.—*See Hearing.*

When, may be demanded by contestee. V. 10, p. 166

When a, is granted by a notary public, it should not extend beyond the time set at the local office for examination of testimony. V. 10, p. 290

Where the local officers fail to fix the hour of the day to which a hearing is adjourned, the parties have the entire day in which to appear . . . . . V. 10, p. 338

Contracts.—*See Preëmption.*

The Government will not enforce private, by giving substance to an empty conveyance. V. 10, p. 69

Real estate. . . . . V. 10, pp. 82, 83

Conveyance.—*See Preëmption.*

Real estate . . . . . V. 10, p. 186

The Government will not enforce private contracts by giving substance to an empty. V. 10, p. 69

Co-Owners.

An applicant for mining patent, who, a co-owner, relocated a mine in his own name, as single proprietor, is not obliged to show title back of such relocation; but if the proceedings are otherwise regular, and his former, and other parties fail to assert an adverse claim, patent may issue in the applicant's name. . . . . V. 10, p. 119

Copies.

Parties in interest, or their attorneys, may take, of papers and documents filed with cases under proper rules and supervision. V. 10, p. 270

Instructions as to fees for, and plats. V. 10, p. 86

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Consideration of the request for a, while the land was covered by an agricultural entry. V. 10, p. 88

The evidence at the, to determine the character of the land involved, fails to show its swampy character . . . . . V. 10, p. 280

A, is ordered to determine a question of conflict with a mining claim already patented. V. 10, p. 51

A mineral application cannot be received for land covered by a homestead entry until when . . . . . V. 10, p. 169

Rule 5 applies to, in contests between homestead claimants and between homestead and pre-emption claimants also. V. 10, p. 149

A relinquishment under the circumstances by the timber claimant prior to the, can give no preference right to a third party. V. 10, p. 198

Where a pre-emptor fails to assert his claim it is error to order a, when the same land is entered thereafter . . . . . V. 10, p. 193

Where a, is held based upon allegation of a pre-emptor's bad faith, and the party, though notified, fails to appear or to appeal from the adverse decision of the local officers, repayment of purchase money will not be al-

lowed on the ground that the testimony at such, fails to establish bad faith. V. 10, p. 126

The local officers cannot dismiss a contest. Where publication is had under act of March 3, 1879, notifying all persons of proposed proof, another publication is not needed under act of June 3, 1878 . . . . . V. 10, p. 149

In view of the assertion and denial of abandonment a, is suggested before decision is made in the case . . . . . V. 10, p. 260

A pre-emptor cannot cite homestead entryman to a, until date of offering final proof, when . . . . . V. 10, p. 91

Consideration of the proof adduced at the. in a certain case . . . . . V. 10, p. 88

Where a pre-emptor after such, files a relinquishment, he cannot have his rights reinstated on what ground . . . . V. 10, p. 193

Before reinstatement is allowed in this case a, to determine the title of Schultz is ordered. V. 10, p. 300

A, may be had on testimony prepared by plaintiff's attorney in his office, if accepted by defendant's attorney with privilege of cross-examination . . . . . V. 10, p. 337

In view of the testimony offered at the, in this case, three 40-acre tracts of the quarter section are held to be mineral land. V. 10, p. 342

A, is ordered to determine whether an exception should be made in favor of lands containing oil claims, similar to the exception in favor of lands containing alum, borax, etc. V. 10, p. 307

Heir.

An, can claim in general only when the ancestor's right was perfect at his death. V. 10, p. 262

A homestead application by a party who dies before entry, may be perfected by. V. 10, p. 241

The notice of contest in this case should have been served upon the several, and not upon the administrator only . . V. 10, p. 222

The cash entry in question by the, is allowed to stand . . . . . V. 10, p. 104

An agreed statement of facts precludes a contradiction or variation of such statement. Several remedies suggested . . V. 10, p. 248

Alien, may purchase under Act of June 15, 1880 . . . . . V, 10, p. 90

Highway.

Adverse occupancy and use of land as a public, for a period of time equal to that prescribed by the Statute of Limitations for bringing ejectment, will presume a dedication to the public . . . . . V. 10, p. 264

Hitchcock.

Establishment of the, land district in Nebraska . . . . . V. 10, p. 59

Homestead.

Residence on a, must be in person, and not by proxy . . . . . V. 10, p. 90

Effect of foreclosure on . . . V. 10, p. 82

As there is no widow, the homestead in this case was sold for the benefit of infant heirs, and contest dismissed . . V. 10, p. 210

Real estate . . . . . V. 10, pp. 82, 83

Homestead Affidavit.

Irregularity of, considered . . V. 10, p. 210

Homestead Act.

A mortgage is not void under the. V. 10, p. 286

Homestead Application.

Erroneous in form, afterwards corrected, should take effect from the date when first received at the local land office. V. 10, p. 220

A, by a party who dies before entry, may be perfected by heirs . . . . . V. 10, p. 241

Homestead Claim.

The tenant of a railroad company cannot base a pre-emption or, upon what occupancy. V. 10, p. 173

A contract to sell part of a, is void, and will not affect the legal status of the claimant. Only an absolute conveyance will defeat his right . . . . . V. 10, p. 358

Reimbursements under the act of July 31, 1876, are not deposits contemplated by Sections 2401, 2402, 2403, R. S., and the certificates cannot be used in payment of, and pre-emption claims . . . . . V. 10, p. 196

The act of May 14, 1880, does not apply to, on lands not subject thereto. V. 10, p. 104

Homestead Claimant.

General circular to . . . . . V. 10, p. 37

A certain, is protected by the principles of the Atherton-Fowler decision against an adverse entry having no foundation in any settlement right . . . . . V. 10, p. 4

A, must make entry and commence settlement and improvements in person, within six months from date of declaratory statement. V. 10, p. 4

How the six months within which a, must begin residence should be calculated. V. 10, p. 359

A party who goes upon public land as a tenant for a pre-emptor or, cannot claim against his landlord . . . . . V. 10, p. 256

A, found upon his land the family of an insane settler. Notwithstanding there was no adverse claim of record he was allowed to make another homestead entry elsewhere without prejudice, and the wife of the insane settler was permitted to enter the land in her own name . . . . . V. 10, p. 343

A, who cultivates and improves the land embraced in his entry, is not excused from residing thereon because elected to a public office which requires his residence elsewhere. V. 10, p, 36

A pre-emptor cannot cite, to a hearing until date of offering final proof, when. V. 10, p. 91

Application to purchase by a second, is permitted, subject to adverse rights . V. 10, p. 36

A, whose entry was about to be contested, relinquished and made a timber culture entry of the land. The contestant having settled upon the land prior to relinquishment, is entitled to make a homestead entry, and the timber culture entry is held for cancellation with credit for fees or repayment if desired. V. 10, p. 107

To whom the rights of a deceased, descend . . . . . V. 10, p. 90

Administrator may make entry and final proof for the benefit of the infant children, where, dies before completing proceedings for making entry . . . . . V. 10, p. 35

Homestead application refused because, failed, for more than five years after adverse claimant's entry, to assert his alleged rights. V. 10, p. 120

How a, may give notice of commutation proof . . . . . V. 10, p. 35

Where a, attempted to transfer 40 acres of his 160, and thereafter seeks to enter the entire quarter-section under the act of June 15, 1880, may enter only 120 acres. and the other party the other 40 acres . V. 10, p. 273

Joint entry by pre-emption and, may be allowed . . . . . V. 10, p. 345

Where. settled before survey on the same forty-acre tract, joint cash entry may be made . . . . . V. 10, p. 229

Effect of a relinquishment obtained while the, was intoxicated . . . . . V. 10, p. 91

Must show residence and cultivation before application to purchase under Sec. 2301, is made . . . . . V. 10, p. 91

Drouth excuses non cultivation, provided good faith is manifested by the .V. 10, p. 227

Where the facts show good faith in settlement and cultivation by the homesteader, cutting and selling of timber need not be reported . . . . . V. 10. p. 295

The testimony fails to show that the, has abandoned his claim . . . . . V. 10, p. 121

Notwithstanding failure of, to appeal from local officers' decision rejecting part of his homestead within a railroad grant, the claim is allowed the heirs after an elapse of eleven years . . . . . V. 10, p. 56

The evidence presented fails to show cause for declining to recognize the prior attorney of the . . . . . V. 10, p. 68

The time during which plats are withdrawn does not run against, or pre-emption claimants . . . . . V. 10, p. 333

The plat of township survey was filed July 30, 1878. Since that date temporary withdrawals have been made. The time will not run against, and pre-emption claimants. V. 10, p. 394

Where a, has made final proof and paid or tendered the fees and commissions, he is entitled to a final certificate, and has a right to make an agreement to sell the land. V. 10, p. 324

A verbal agreement to sell land, is not binding under the statute of frauds, and will not invalidate the rights of a . V. 10, p. 324

An absolute conveyance by the, of a small portion of an acre belonging to the homestead tract, does not disqualify him from making final entry, as notice of such a small matter need not be taken cognizance of in the administration of the law . . . . V. 10, p. 356

Where final proof of, is satisfactory except that he has made a quit-claim deed for the land in question, he should be allowed an opportunity to prove his allegations that such deed was made under duress . . V. 10, p. 358

In the absence of positive proof, no presumption of the death of a party can be indulged until after the expiration of seven years. . . . . V. 10, p. 359

Homestead Declaratory Statement.—*See Declaratory Statement.*

Homestead claimant must make entry and commence settlement and improvements in person within six months from date of. V. 10, p. 4

The filing of a second, is denied. V. 10, p. 294

A pre-emptor may settle on land covered by a, and file his pre-emption declaratory statement. After the homestead party has made entry, the pre-emptor is not deprived of his privilege of making proof and payment because of a third party's contest against the said homestead entry . . . . . V. 10, p. 153

Where a soldier made a homestead entry of other land than that upon which he filed a, under the rule in force prior to issuance of circular of December 15, 1882, and good faith is shown, this office is not disposed to disturb the entry . . . . . V. 10, p. 104

Homestead Entry.

A, by a married woman is illegal. V. 10, p. 241

A married woman cannot make a, or a timber culture entry unless she has been deserted by her husband. or for some other reason can be regarded as the head of the family . . . . . V. 10, p. 323

The, of a minor canceled, but allowed to make another with credit for settlement from the date he became of age . . . V. 10, p. 89

A, by the sister of the Receiver is not objectionable on that account alone. V. 10, p. 121

The mere fact of consanguinity will not invalidate a. As the homestead party is not a member of the Receiver's family, nor an employee in the land office, his entry is allowed to stand. . . . . V. 10, p. 120

A, is a reservation of the land embraced thereby . . . . . V. 10, p. 169

How excess above 160 acres should be treated . . . . . V. 10, p. 210

An excess payment, less than one dollar, is not required in, and timber culture entry. V. 10, p. 226

The Aanrud case does not apply to irregular quarter sections where an entry approximating 160 acres could easily be made. V. 10, p. 168

Where a qualified party desires to make both a, and a timber culture entry, he may commence contest against two timber culture entries . . . . . V. 10, p. 107

In case a, embracing an area in excess of 160 acres (the party paying for such excess), is canceled for relinquishment or abandonment, the party to the entry has no claim to the excess in area over 160 acres. . V. 10, p. 360

Two, on the same tract may be allowed, subject to the adjustment of the rights of the parties. . . . . V. 10, p. 90

Residence on an adjoining tract, and cultivation of the land embraced in the, is not a compliance with the law. . . . V. 10, p. 70

Allowed to stand, notwithstanding the party failed to make personal residence within the required six months. . . . . V. 10, p. 90

Where a party made one, under general homestead laws, and thereafter made second, of other lands under Act of June 8, 1872, believing that he was entitled to both, notwithstanding irregularity of second entry, he may purchase the land covered thereby under Act of June 15, 1880, if same was subject to entry and there is no adverse claim.
V. 10, p. 151

Final proof by the minor child of a deceased entryman who was unnaturalized at date of death . . . . . V. 10, p. 192

Instructions as to final affidavits in Dakota, and pre-emption entries. . . . V. 10, p. 360

Occupation of a number of buildings. as a town or place of business, on a tract of land at date of, therefor, is no bar to final entry when. . . . . V. 10, p. 356

Final proof in, and pre-emption entry may be made before a county clerk at his office, notwithstanding no court may be held in his county . . . . . V. 10, p. 310

Acts of settlement performed prior to cancellation of, can avail naught. . V. 10, p. 240

Settler on land covered by, which has expired by limitation. . . . . V. 10, p. 226

An agreement to convey land, entered into by a party prior to, by him therefor, is not considered as evidencing bad faith in making the entry, should he obtain a verbal release from the contract prior to entry; such a contract, in any case, is no bar to making the final affidavit, inasmuch as it does not constitute the alienation which the law prohibits.
V. 10, p. 356

Notwithstanding withdrawal took effect February 20, 1866, a, within this grant, made December 26, 1865, is not within the Act of April 21, 1876, in view of decision in 14 Otto, 329, wherein it is stated that the lands for this company were withdrawn in July, 1865. . . . . V. 10, p. 215

Where a pre-emptor relinquishes and makes a, he loses the land if another party has, meanwhile filed a declaratory statement.
V. 10, p. 174

A mineral application cannot be received for land covered by a, until when.
V. 10, p. 169

For lands in sections withdrawn for indemnity under railroad grants are not permitted.
V. 10, p. 95

In view of the explanation offered, Foster is allowed to make a second . . V. 10, p. 228

The five years in a, dates from entry and not from residence. . . . . V. 10, p. 36

The operation of the Act of June 15, 1880, is not affected by the cancellation of a.
V. 10, p. 36

A certain tract embraced three, which have been successively canceled.
V. 10, p. 36

Repayment allowed under Act of June 16, 1880, where a second, was made through ignorance . . . . . V. 10, p. 10

Cash entry of husband held for cancellation in view of the benefit of the, allowed a deserted wife. . . . . V. 10, p. 92

Act of June 15, 1880, does not apply on part of husband, pending action on a, claimed by a deserted wife . . . . . V. 10, p. 92

Notwithstanding failure of homestead claimant to appeal from local officers' decision rejecting part of his, within a railroad grant, the claim is allowed the heirs after a lapse of eleven years . . . . . V. 10, p. 56

A party made a, and prior to six months from entry, made cash entry on a pre-emption filing covering different land, *held* that the, should be canceled. . . . . V. 10, p. 240

How made where a county embraces land in two districts. . . . . V. 10, p. 169

A, made by a married woman to protect the family property and secure a home, is canceled, but the husband is permitted to make entry and date settlement from the time he went upon the land with his family.
V. 10, p. 294

Held for cancellation because of illegality in its inception . . . . . V. 10, p. 376

A question of fraud and illegality in a.
V. 10, p. 104

A widow may continue to cultivate the homestead of her deceased husband, and at the same time make a, in her own name.
V. 10, p. 90

How terminated . . . . . V. 10, p. 228

While a, remains uncanceled, another entry of any kind cannot be allowed . V. 10, p. 104

An entry of record valid on its face excepts a tract of land from a subsequent law, grant or sale until a forfeiture is declared.
V. 10, p. 215

A, is an appropriation of land from date of settlement, and after that date a pre-emptor could acquire no rights except on cancellation of such entry . . . . . V. 10, p. 168

In view of the conflicting testimony, joint entry is allowed the two homesteaders who had improvements on the tract, and the third, is canceled . . . . . V. 10, p. 323

May be amended to embrace a contiguous lot not included through error of local officers.
V. 10, p. 208

The amendment of a, is allowed in certain cases . . . . . V. 10, p. 34

A second, will not be refused on account of carelessness in selecting land upon which a prior settler is actually residing.
V. 10, p. 323

In view of the altitude and lack of moisture, the land in this, will not produce crops, a relinquishment and second entry are permitted . . . . . V. 10, p. 273

The practice of allowing parties making a, or timber culture entry, credit for the fee and commissions paid by them on a canceled prior entry is discontinued . . . . . V. 10, p. 306

Effect where a party homesteads one tract of land and settles on another tract, but does not apply to amend the entry until after a valid adverse right has intervened.
V. 10, p. 227

By whom a, can be contested. V. 10, p. 229

An attempted sale of land embraced in a,

is not sufficient ground for cancellation, but raises a presumption of bad faith.
V. 10, p. 70

In initiating a contest against a, the contestant need not make application to enter.
V. 10, p. 290

A settlement is an appropriation of land and a subsequent, is subject to the settler's compliance with law. The entry appropriates it against the world, except the prior settler. The assertion of the settler's claim initiates a contest. The burden and expense of proof is upon the entryman. The settler's application to transmute must be received and the entryman given an opportunity to show cause why it should not be permitted.
V. 10, p. 312

Where a settler goes upon land afterwards sought to be entered under the act of June 3, 1878, such settlement followed by a, precludes a timber entry, and are questions as to the relative value of the land for agricultural purposes or for timber, are not to be considered . . . . . V. 10, p. 398

The filing of a preliminary affidavit under act of June 3, 1878, does not prevent a, subject to the rights of the timber claimants.
V. 10, p. 198

In view of the testimony, a certain, is allowed to stand . . . . . V. 10, p. 91

A contest by a divorced wife against her absent husband's, how treated . V. 10, p. 19

Private entryman is permitted to show cause why his private entry should not be cancelled where, was made subsequent to private entry . . . . . V. 10, p. 362

Where double minimum land has been selected and certified to a state under the Internal Improvement Grant, thereon cannot be permitted, notwithstanding such certification is alleged to have been erroneous.
V. 10, p. 359

In view of the evidence submitted, and the validity of the relinquishment filed, Bank's, is allowed to stand . . . . . V. 10. p. 378

Pending a pre-emption claim, a party cannot make a, without abandoning his pre-emption claim . . . . . V. 10, p. 41

The rule laid down in circular of March 20, 1883, requiring notice of intention to submit final proof to be published once a week for *six* weeks is adhered to . . V. 10, p. 103

Proceedings where a party who relinquished a, filed a pre-emption declaratory statement on another tract and afterwards transmuted to a.
V. 10, p. 256

The right to transmute a pre-emption filing to a, depends upon the validity of the pre-emption claim . . . . . V. 10, p. 312

In commuting a, proof of cultivation is required . . . . . V. 10, p. 343

Instructions in cases of commutation of.
V. 10, p. 39

Patent will issue on reinstated, because of want of notice of cancellation of entry.
V. 10, p. 20

In view of the peculiar facts of another's prior settlement, the, in question is cancelled without prejudice . . . . . V. 10, p. 121

An additional, is granted, notwithstanding a contest was initiated for abandonment of the original entry . . . . . V. 10, p. 37

Instructions as to, by soldiers (see Soldier).
V. 10, p. 38

Six months' additional time after entry is not allowed in cases of soldiers.
V. 10, p. 70

In view of the testimony, the, of McElrath, late Receiver at Miles City, Montana, is ordered cancelled notwithstanding withdrawal of contestant . . . . . V. 10, p. 311

In view of the evidence submitted, the, is allowed to stand, if certain additional proof is furnished . . . . . V. 10, p. 377

The entire term of enlistment, without reference to when the war of the rebellion closed, governs in computing the time in, by by soldier . . . . . V. 10, p. 344

The patent in a, made by a guardian for minor orphan child of a deceased soldier must issue to the beneficiary whether of age at date thereof or not . . . . . V. 10, p. 256

In this case the title in which to issue final certificate should be "Cora E. Harper, orphan child of Reuben S. Harper, deceased," with a right as *feme sole* to another homestead in her own person . . . . . V. 10, p. 121

Party must make, and commence settlement and improvements in person, within six months from date of declaratory statement.
V. 10, p. 4

Six months' additional time after, is not allowed in soldiers' homestead cases.
V. 10, p. 70

Where a soldier was taken prisoner and paroled, and was discharged by reason of such parole, he would be entitled, in computing residence on his homestead entry to credit for his full term of enlistment, provided always that at least one year's residence is had on homestead . . . . . V. 10, p. 394

Where a soldier made a, of other than that upon which he filed a homestead declaratory statement under the rule in force prior to issuance of circular of December 15, 1882, and good faith is shown, this office is not disposed to disturb the entry . . . . . V. 10, p. 104

A soldier's additional homestead entry cannot be made upon the land of an actual settler who has asserted his right by a pre-emption filing or . . . . . V. 10, p. 5

When a soldier may contest for abandonment in case another party enters as a, the land embraced in his declaratory statement.
V. 10, p. 92

Where a guardian makes a, for the minor orphan child of a deceased soldier, and said child becomes of age prior to time of making final proof, the final affidavit must be made by the beneficiary . . . . . V. 10, p. 394

Acts of settlement performed while the land is embraced in a, give a claimant no legal status. After cancellation of the, the rights of two pre-emptors must be determined by their settlement and not by their residence; the first *bona fide* settler takes the land in dispute if followed within a reasonable time by his residence thereon . . . V. 10, p. 274

The, of a tract not legally subject thereto is void, and the party may make a legal entry. V. 10, p. 168

A certain, was changed to a timber culture entry. Atherton–Fowler decision held to apply thereto . . . . . V. 10, p. 226

Parties making new or additional entries under the acts of March 3, 1879, and July 1, 1879, have seven years within which to make final proof . . . . . V. 10, p. 228

Notwithstanding the original entry postdates the act by three months, an additional entry is allowed . . . . . V. 10, p. 243

A party whose original entry has been canceled has no rights under the act of March 3, 1879 . . . . . V. 10, p. 37

This office will not undertake to state when an. under act of March 3, 1879, would be liable to cancellation for failure to submit final proof in time . . . . . V. 10, p. 103

House.—*See Dwelling.*

The mere act of locking the door of a purchased, is not settlement . . . V. 10, p. 168

Hotel.

Real estate . . . . . V. 10, p. 83

Hot Springs Reservation.

Lands within the limits of the, in Uncompahgre Park, Colorado, are not subject to settlement . . . . . V. 10, p. 58

Huertas Scrip.

This scrip cannot be located within the six mile limits of any railroad line in Florida. V. 10, p. 403

Husband.

Act of June 15, 1880. does not apply on part of, pending action on a homestead claimed by a deserted wife . . . V. 10, p. 92

A widow may continue to cultivate the homestead of her deceased, and at the same time make an entry in her own name. V. 10, p. 90

Cash entry of, held for cancellation in view of the benefit in the homestead allowed a deserted wife . . . . . V. 10, p. 92

Idaho.

Appropriation for Surveyor-General of. V. 10, pp. 30, 47

Establishment of the Hailey Land District. V. 10, p. 83

Illinois.

Proceedings in contests in . . V. 10, p. 67

Improvements.

Section 2309, U. S. R. S., provides that settlement and, must be made within six months from date of filing . . . . . V. 10, p. 169

The purchase of a dwelling by a pre-emptor is the same as the erection of one. The purchase of, is evidence of good faith when followed by inhabitancy after settlement. V. 10, p. 168

In case of unsurveyed lands, where a party notifies a subsequent settler to keep his stock away from the land covered by the prior party's, it is sufficient notice that he claims the subdivision upon which his, should appear to be when survey was made. V. 10, p. 326

The point that an owner is estopped from claiming land when he has lain by and seen another make, upon it, can be raised only by one who is ignorant of his defective title. V. 10, p. 27

Homestead claimant must make entry and commence settlement and, in person within six months from date of declaratory statement. V. 10, p. 4

Madigan's residence and, are not upon any part of the tract for which he filed. His claim falls within the meaning of Section 2262 R. S., and his entry will be cancelled without recourse for the purchase money. V. 10, p. 401

Intentions are not the equivalent of actual residence and . . . . . V. 10, p. 40

The owner of a mill site may remove the timber thereon o ly for his mining. V. 10. p. 18

An owner of real estate who stands by and allows, to be made thereon, while he may not be permitted to claim the, will not thereby be estopped to assert title to the fee. V. 10, p. 110

Indemnity.

Appropriation for adjusting claims for, for swamp lands . . . . . V. 10, pp. 31, 48

Pre-emption claims or homestead entries on, under railroad grants, are not permitted. V. 10, p. 95

Indemnity Lands.—*See Railroad—Swamp.*

School selections cannot be made of double minimum lands within railroad grants, where the lands lost were minimum in price. V. 10, p. 110

The, within Wisconsin and Minnesota must be selected within three months from notice to the railroad. Indemnity for the lands lost within those States must be selected within those States . . . . . V. 10, p. 154

Indemnity Limits.

In view of the facts, the land is awarded to the settler . . . . . V. 10, p. 108

Proceedings suggested in case of two tracts entered by settlers within reserved, of a railroad grant . . . . . V. 10, p. 153

A settlement within the, of the Southern Pacific R. R. after withdrawal and prior to June 28, 1870, is validated by the joint resolution of June 28, 1870 . . . . V. 10, p. 300

Indemnity Location.

The fee of one dollar to the local officers for each 160 acres located by States and corporations and allowed by Section 2238 R. S. is not payable on original selections of swamp lands, but is required on. V. 10, p. 332

Indiana.

Proceedings in contests in . . V. 10, p. 67

Indian Lands.

Lands in Hot Springs Reservation, Uncompahgre Park, are not subject to settlement. V. 10, p. 58

Sale of Otoe and Missouria Reservation in Kansas and Nebraska . . . . . V. 10, p. 58

Valentine scrip is not locatable on. V. 10, p. 59

How the Blackfeet agency site will be disposed of . . . . . V. 10, p. 43

When the Crow, became public lands. V. 10, p. 66

Restoration of Malheur Indian Reservation, Oregon . . . . . V. 10, p. 96
A mineral location upon an, is void. V. 10, p. 87
The act of March 3, 1875, allows settlers prior to 1874, to take 160 acres of the reserved, on certain conditions . . . . . V. 10, p. 5
When the odd sections in certain townships within the limits of a railroad grant are excluded from the grant because reserved for, at the time the grant took effect, the price of the even sections in the same townships is not reduced to single minimum on that account. V. 10, p. 108

Infant Children.—*See Minor.*

Inhabitancy.—*See Residence.*
The purchase of a dwelling by a pre-emptor is the same as the erection of one. The purchase of improvements is evidence of good faith when followed up by, after settlement. V. 10, p. 168

Innocent Purchaser.
Those claiming under fictitious grantee are not protected as innocent purchasers for value. V. 10, p. 284
The purchaser of soldiers' certificates is not an . . . . . V. 10, p. 211
Section 2262 R. S. refers to sales before, not after, entry—and the clause protecting, has reference to the effect of the conveyance as between grantor and grantee, and not to its effect as between either party and the government . . . . . V. 10, p. 297

Insane Claimant.
Notice of contest cannot be served personally nor on the superintendent of an insane asylum where the, is confined. . V. 10, p. 374
Proceedings to protect the interests of an. V. 10, p. 294
A homestead entryman found upon his land the family of an. Notwithstanding there was no adverse claim of record, he was allowed to make another homestead entry elsewhere without prejudice, and the wife of the, was permitted to enter the land in her own name. . . . . V. 10, p. 343

Inspectors.
Appropriation for . . . . . V. 10, p. 30

Instructions.—*See Circular Instructions.*

Intention.
A pre-emptor must do some act to connect himself with the tracts claimed. Mere, is not sufficient . . . . . V. 10, p. 6
Is not the equivalent of actual residence and improvement . . . . . V. 10, p. 40

Interlocutory Order.
Appeal does not lie from an . V. 10, p. 166
A motion for withdrawal of contest, whether verbal or written, at or before the day of trial, is only an, and will be decided on the day of the trial. . . . . V. 10, p. 289

Internal Improvement Grant.
Where double minimum land has been selected and certified to a State under the, homestead entries thereon cannot be permitted, notwithstanding such certification is alleged to have been erroneous . V. 10, p. 359

Interpleader.
In view of the facts, the defendant cannot purchase under the act of June 15, 1880. V. 10, p. 230

Iowa.
Appropriation for Surveyor-General of Nebraska and. . . . . V. 10, pp. 30, 48

Irregularity.
In view of the manifest, of procedure, this case is classed within the category of exceptions to the general rule laid down in Owen *vs.* Russell . . . . . V. 10, p. 400

Irrigation.—*See Desert Lands.*
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Lode Claim.
Where a, is located over a survey already patented, the later lode must be shown to extend beyond the lines of the patented survey. The new discovery shaft cannot be located on such patented claim. Improvements made within the patented ground cannot be credited to later claim . . . . V. 10, p. 150
The plat of survey of a, must show all conflicts, and unless such conflicts are shown, the survey should not be approved .V. 10, p. 240
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The statutory direction that the end lines of a, must be parallel should be followed as a rule, but under peculiar circumstances an exception to the rule may be allowed. V. 10, p. 102

Proceedings where claimants fail to file adversely to a placer application which embraces their. . . . . V. 10, p. 18

An applicant for patent for a, within a patented placer claim must show affirmatively the existence of such mine and its true location, and prove his possessory right and value of work performed . . . V. 10, p. 150

There seems to be no law authorizing the Land Department to decide a conflict between a town-site and a. . . . V. 10, p. 134

No authority is given by the Statutes to the officers of the Land Department to insert in a patent for a, any exceptions as to town-site rights, and such exceptions are void. V. 10, p. 134

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Instructions forbidding parties to export from a State or Territory the, and timber cut therein. The special agent in this case is ordered to ascertain the value of the timber already cut, where it is now, the distance to the nearest available market, and the value in such market. . . . . V. 10, p. 136

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The, of the defendant to the man from whom she had previously been divorced is held to be valid in Dakota. . V. 10, p. 297

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Establishment of land office at, Nebraska. V. 10, p. 59

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Where a, is confirmed by special boundaries, land claimed by the grantee outside such boundaries will not be excepted thereby from a railroad grant which took effect while the Mexican grant was *sub judice*. . . . V. 10, p. 216

The grantee who claims land outside his confirmed, must, under the act of July 23, 1866, purchase within a reasonable time. V. 10, p. 218

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Tract does not pass to the company, because within a, *sub judice* when the railroad grant became effective. . . . . V. 10, p. 13

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Land in an old, never released cannot be selected under swamp grant acts. V. 10, p. 176

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A town-site may be located as. V. 10, p. 79

Three 40-acre tracts of the quarter section are held to be, in this case. . . V. 10, p. 342

Agricultural claimant must prove the character of land after it has been returned as mineral before entry is allowed . V. 10, p. 87

School sections containing coal, are subject to disposal as mineral lands. . . V. 10, p. 54

Markings on plats do not conclude the character of the lands . . . . V. 10, p. 238

Entries allowed on or since March 3, 1883, containing, in Alabama are void. V. 10, p. 55

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After location, the locator may sell part of a, and hold the remainder . . . V. 10, p. 181

The taking up of more width of surface ground for a, than is allowed by law does not invalidate the location, and the monument stakes may be moved to cast off the excess. V. 10, p. 102

A, may include any number of adjacent locations . . . . . V. 10, p. 79

Whatever is fundamental to the possession and right of possession of a, is remitted to the courts, and parties who fail to set up an adverse claim to an application regularly made cannot protect their rights by a protest submitted to the Land Department. V. 10, p. 102

Dismissed because no mineral is shown in the . . . . . V. 10, p. 191

It is not necessary to the validity of a, that the discovery of mineral should be made in the "discovery shaft." A discovery either

within the shaft or in any other part of the surface ground within the limits of the claim is sufficient . . . . . V. 10, p. 392

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The locator of a, upon land claimed under a confirmed Mexican Grant cannot attack a patent issued upon such a Mexican grant on the ground of fraud . . V. 10, pp. 181, 182

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Owners of, need not show affirmatively that they have complied with the mining statutes to maintain possession. The common law doctrine of possession applies . V. 10, p. 291

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The indemnity lands within Wisconsin and, must be selected within three months from notice to the railroad. Indemnity for the lands lost within those States must be selected within those States . . . . . V. 10. p. 154

A tract within the overlapping limits of the, grant of 1855 and the Northern Pacific grant of 1864 is solely within the senior grant. V. 10, p. 215

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Five rules are laid down by which a deserted wife or, is recognized as the absent husband's agent . . . . . V. 10, p. 360

An administrator may make entry and final proof for the benefit of the, where homestead settler died before completing proceedings for making entry . . . . . V. 10, p. 35

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Misdescription.

The amendment of a homestead is allowed in cases of error or . . . . . V. 10, p. 34

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When the Crow Reservation, became public land . . . . . V. 10, p. 96

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The Attorney-General is requested to file a new bill for vacating patents to land in. V. 10, p. 328

Mortgage.

A, is not void under the Homestead act. V. 10, p. 286

The testimony fails to show that the homestead claimant has abandoned his claim. V. 10, p. 121

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Naturalization.—*See Alien—Citizenship.*

The daughter of an alien who, after filing his declaration of intention, died before taking out final papers, is deemed a citizen upon taking the prescribed oath . . V. 10, p. 19

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When the plats and field notes show that land is bounded on one side by, a purchaser takes to the low-water mark of such lake, and a patent issued to a purchaser of a strip inside a meander line is void, as against the holder of the original title bounded upon the water line . . . . . V. 10, p. 129

In view of the circumstances, it is held that there is no vacant land in the described section . . . . . V. 10, p. 248

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Sale of land in the Otoe and Missouria Reservation in Kansas and . . . V. 10, p. 58

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Appeal does not lie from a report by the Surveyor-General in a private land claim in. V. 10, p. 216

A recommended confirmation by the Surveyor-General, withdraws a private land claim in, and the judiciary cannot interfere till after Congress shall have rejected it. V. 10, p. 200

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Non-mineral Land.

Question of residence by a pre-emptor to a tract of, where no adverse claim exists. V. 10, p. 87

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Effect of departure of the line of definite location from the line of general route of the. V. 10, p. 74

The, under its charter may make certain change of line after having filed its map of general route . . . . . V. 10, p. 74

Notary Public.

Attorneys of record in cases cannot as, administer oaths in those cases . . V. 10, p. 222

Disqualified to administer oaths in certain cases are thereby disqualified under the United States law . . . . . V. 10, p. 222

Attorneys disbarred from practice are not prevented from exercising the duties of. V. 10, p. 254

When a continuance is granted by a, it

should not extend beyond the time set at the local office for examination of testimony. V. 10, p. 290

Notice.—*See Public—Publication.*

Of contest must be signed by one or both of the local officers . . . . . V. 10, p. 222

Personal, is required except when. V. 10, p. 166

The official report of the Register that, was given will be accepted in preference to the affidavit of an interested party. V. 10, p. 233

The, of contest in this case should have been served upon the several heirs, and not upon the administrator only . . V. 10, p. 222

Of contest cannot be served personally, nor on the superintendent of an insane asylum where the insane claimant is confined. V. 10, p. 374

When and how, by publication should be given . . . . . V. 10, p. 374

The defect of, by publication before affidavit is made that personal service cannot be had, is not, however, necessarily fatal to the contest itself. The proceedings so far as irregular may be set aside, and resumed in a proper manner from the point of departure from the requirements of practice. V. 10, p. 290

Copies of published, must be mailed to last known address, at least thirty days in advance of a hearing . . . . . V. 10, p. 338

Cannot issue where published, incorrectly describes the tracts embraced in a placer claim . . . . . V. 10, p. 34

Construction of rule No. 14, as to, by registered letters . . . . . V. 10, p. 189

Thirty days allowed from receipt of, of decisions by local officers, and ten days additional for transmission of notice and return of appeal . . . . . V. 10, p. 86

Effect of hearing held on day prior to that which the required, specifies. . . V. 10, p. 49

Owing to insufficient, and absence of application to enter by contestant, the contest in this case is dismissed . . . . . V. 10, p. 271

If an entry is inadvertently made it can be vacated only by proper proceedings upon due. V. 10, p. 190

How a homestead entryman may give, of commutation proof. . . . . V. 10, p. 35

In case of unsurveyed lands, where a party notifies a subsequent settler to keep his stock away from the land covered by the prior party's improvements, it is sufficient, that he claims the subdivision upon which his improvements should appear to be when survey was made . . . . . V. 10, p. 326

The rule laid down in circular of March 20, 1883, requiring, of intention to submit final proof to be published once a week for *six* weeks is adhered to. . . . V. 10, p. 103

In view of the facts presented, the timber culture entry is allowed to stand. V. 10, p. 243

If, and diagram in an application for mining patent were conspicuously posted upon the claim as located, but on a part excluded because of conflict, the posting is sufficient. V. 10, p. 256

The selection of newspapers for publication of mining, rests (in the discretion of the Register) within the limits prescribed by Section 2325 R. S. Other things being equal, the convenience of the applicant should be consulted. . . . . V. 10, p. 376

One making application for patent to mineral land is required by law to put on the premises, thereof. The courts will presume such, given, which is of itself a warning to all that the parties are about applying for patent—seeking to obtain title . . V. 10, p. 110

Patent will issue on reinstated homestead entry, because of want of, of cancellation of entry. . . . . V. 10, p. 20

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A mere, of public land has no right thereto. V. 10, p. 120

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All, should be addressed to the officers having charge, and not to individuals or attorneys. . . . . V. 10, p. 34

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Proceedings in contests in . . V. 10, p. 67

Oil-bearing Lands.

A hearing is ordered to determine whether an exception should be made in favor of lands containing oil claims similar to the exception in favor of lands containing alum, borax, etc. V. 10, p. 307

Omaha Indian Lands.

How and when these lands will be offered for sale. . . . . V. 10, p. 219

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Donation claim in, considered. V. 10, p. 262

In view of the date of definite location of the railroad past the land the, donation claim is allowed. . . . . V. 10, p. 213

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Where a guardian makes a homestead entry for the, of a deceased soldier, and said child becomes of age prior to time of making final proof, the final affidavit must be made by the beneficiary. . . . . V. 10, p. 394

Osage Lands.

The general pre-emption laws were never extended to the . . . . . V. 10, p. 262

An agreed statement of facts precludes a contradiction or variation of such statement. Several remedies suggested . . V. 10, p. 248

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Sale of land in the, reservation in Nebraska and Kansas . . . . . V. 10, p. 58

Parol Contracts.
For sale of land . . . . . V. 10, p. 82

Partition.
A party to a, proceeding in which there is a decree for, is not *estopped* from controverting the validity of the title to the land partitioned in a subsequent action involving the validity of the legal title to such land.
V. 10, p. 282

Patent.—*See Application for Mining Patent.*
List of the Homestead, Cash and Mineral, issued may be found on the last one or two pages of each issue of the LAND OWNER.
V. 10, p. 83
A, granted by the Land Department is unassailable, except when . . . . V. 10, p. 79
The jurisdiction of the department over a, ceases with its issue . . . V. 10, pp. 12, 355
In an action of ejectment, a, for land granted by the United States cannot be collaterally attacked. . . . . V. 10, p. 110
In suit to set aside, on the ground of conspiracy and fraud, and that the pretended grantors were fictitious, and never entered the lands nor resided in the county.
V. 10, p. 284
The owners of the land, at the time of filing a bill in equity to vacate a, are indispensable parties to the bill. . . . . V. 10, p. 112
It is well settled that a, issued without authority of law is void . . . . V. 10, p. 282
The Land Department cannot issue a, on a void entry. . . . . V. 10, p. 397
Where a party defrauds and deceives the officers of the Land Department and induces them to execute a, a court of equity may set it aside. . . . . V. 10, p. 200
A, to public lands relates back to the time when they were purchased, and gives the patentee title as to that date . . V. 10, p. 159
A, issued subsequent to certificate of purchase relates to and takes effect from date of entry . . . . . V. 10, p. 81
Issuance of, is conclusive proof that the requisite notices were given . . V. 10, p. 27
What entitles the claimant of a, issued to another equitable relief. . . . V. 10, p. 160
When the plats and field notes show that land is bounded on one side by a navigable lake, a purchaser takes to the low-water mark of such lake, and a, issued to a purchaser of a strip inside a meander line is void as against the holder of the original title bounded upon the water line. . . . . V. 10, p. 129
So long as one patent is outstanding, a second, cannot issue. . . . . V. 10, p. 12
Section 2447, R. S., only provides for the issuance of a, where a claim for land has been confirmed by law, and in which no provision is made by the confirmatory statute for the issuance of a. . . . . V. 10, p. 402
A grantee is as necessary to the conveyance of land as the grantor. Hence a grant to a fictitious person is simply void . V. 10, p. 284
The action of the Land Department in issuing, for lands in cases within its jurisdiction is conclusive of the legal title. . V. 10, p. 27
Where a man gave a deed reciting therein that he had entered the land at the Federal land office, persons claiming under such deed could maintain ejectment against others to whom he had sold after taking out his.
V. 10, p. 159
Will issue on reinstated homestead because of want of notice of cancellation of entry.
V. 10, p. 20
A, is not necessary to vest title in a certain railroad company, but title vests by virtue of the grant, and the act of certification to the State. . . . . V. 10, p. 243
To be issued for lands opposite the constructed portion of a railroad, notwithstanding the peculiar language of the granting act
V. 10, p. 94
The title to lands passes to the State for this railroad company by, and not by certificate . . . . . V. 10, p. 20
The, in a homestead entry made by a guardian for minor orphan child of a deceased soldier must issue to the beneficiary, whether of age at date thereof or not . . V. 10, p. 256
Purchaser before, takes with notice of all defects, and of contingency that title may not be perfected . . . . . V. 10, p. 68
Where alleged facts, if proved, would defeat an entry on the ground of fraud, an application for a hearing to investigate should be granted—pending such investigation, the issuance of, should be suspended.
V. 10, p. 374
In this case the title in which to issue final certificate should be "Cora E. Harper, orphan child of Reuben S. Harper, deceased," with a right as *feme sole* to another homestead in her own person . . . . . V. 10, p. 121
The, erroneously issued for the tract not in dispute can only be vacated how.
V. 10, p. 5
A promise to convey title when obtained will not estop the promisor to assert such title by action in ejectment . . V. 10, p. 110
A party receiving a, is not bound by exceptions, reservations or conditions inserted in the patent without authority of law.
V. 10, p. 134
The Secretary has no power to compel the Commissioner to deliver unrecorded or undated . . . . . V. 10, p. 26
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course of business in the Federal land office, in that a purchase commonly | recedes the issue of a, a good while . . . . V. 10, p. 159

Effect of issue of, to lands embracing mines. . . . . V. 10, p. 81

The name of the United States cannot be used in a suit to vacate certain placer patent. V. 10, p. 273

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Every, must be made to the Receiver. V. 10, p. 86

Perjury.

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The division of forty-acre tracts into ten-acre lots authorized for the purpose of enabling the, location to conform to the surveys. V. 10, p. 3

Fire-clay or kaolin, though with well-defined boundaries, is not a vein or lode, but must be located as a . . . . . V. 10, p. 88

Patent cannot issue where published notice incorrectly describes the tracts embraced in a. V. 10, p. 34

Where part of a legal sub-division is non-mineral land, and the gold deposit is ravine, a location that follows the mineral deposit conforms to the public surveys "as nearly as practicable" . . . . . V. 10, p. 338

Certain lands were patented to the State under the internal improvement grant, and, were thereafter located thereon. Application for mining patent rejected and proceedings in the court suggested. . . . . V. 10, p. 292

An applicant for patent for a lode claim within a patented, must show affirmatively the existence of such mine and its true location, and prove his possessory right and value of work performed . . . . . V. 10, p. 150

Proof required where an applicant for patent seeks to embrace portion of the surface ground already patented or applied for with a. V. 10, p. 119

Question of lode within, known to exist at date of placer patent . . . . . V. 10, p. 18

Plats.

Instructions as to fees for copies and. V. 10, p. 86

Copies of, and diagrams can be made only by the local officers or their clerks. V. 10. p. 189

Appropriation for reproduction of worn and defaced . . . . . V. 10, p. 48

Applicants for mining patent are not bound to note conflicts with unofficial surveys on, and field notes. . . . . V. 10, p. 69

A presumptive reservation may be overcome. Erroneous markings on, and field notes do not constitute reservations, and such markings are not conclusive evidence of the character of land . . . . . V. 10, p. 238

Porterfield Scrip.

A reservation made on application of the War Department must give way to a *prior*, application made when the land in question was public . . . . . V. 10, p. 98

Possession.—*See Actual Possession.*

Fencing is not necessary to . V. 10, p. 296

Mining claimants need not show affirmatively that they have complied with the mining statutes to maintain. The common law doctrine of, applies. . . . . V. 10, p. 291

The statute recognizes two kinds of, of mining ground. . . . . V. 10, p. 265

Postmaster.

A, may act as attorney for parties making or perfecting entries of public lands. V. 10, p. 390

Power of Attorney.

A naked, may be revoked by a principal, but an executed power of attorney cannot be revoked . . . . . V. 10, p. 68

Practice.—*See Contest—Hearing.*

Rule 1 allows the initiation of contests against alleged abandoned or forfeited homestead entry or timber culture entry by any person, whether in interest or not; but in all other cases (including pre-emption) only by a party in interest. In view of the irregular hearing in this case the contestant acquired no rights, and the timber culture entry, after relinquishment of a pre-emption claim by the contestee, is allowed to stand . V. 10, p. 298

Rule 5 applies to hearings in contests between homestead claimants and also between homestead and pre-emption claimants. V. 10, p. 149

Construction of Rule 14 as to notices by registered letters. . . . . V. 10, p. 89

There is nothing obligatory in Rule 35. Registers and Receivers must exercise their discretion in permitting testimony in contested cases to be taken elsewhere than at the local land office. . . . . V. 10, p. 119

Rule 53 applies to any case forwarded for the action of the General Land Office. V. 10, p. 206

The case as stated does not come under Rules 66 *et seq* . . . . . V. 10, p. 166

Rule 87 does not nullify Rule 86. It applies only where local officers give notice through the mails. It does not apply in case of personal service. . . . . V. 10, p. 307

Under Rule 93, in land cases, a copy of notice of appeal and specifications of error and argument are not required to be served on the opposite party when the appeal is taken to the Commissioner from the decision of the Register and Receiver. . . . . V. 10, p. 118

What is meant by the "grounds" upon which *certiorari* is brought under rules of. V. 10, p. 88

No rule for the administration of law will be permitted to defeat a statutory right. V. 10, p. 258

Rules of, require personal notice, except when. . . . . V. 10, p. 166

The decision of the General Land Office, based upon *ex parte* hearsay evidence, is vacated, and proceedings are ordered in accordance with the Rules of . . . . V. 10, p. 102

Thirty days allowed from receipt of notice of decisions by local officers, and ten days additional for transmission of notice and return of appeal under the . . . . V. 10, p. 86

A prior right by virtue of a contest may be waived in part by an amicable agreement.

Such agreement should be respected where it settles a controversy like the one in this case, and should not be overthrown because of a technical violation of a rule of . V. 10, p. 398

The department declines to express an opinion on hypothetical cases . V. 10, p. 322

Where a party acting on the word of his attorney neglects to initiate legal proceedings, he has no remedy . . . . . V. 10, p. 190

After a case has been decided by the Secretary, and a particular relief granted, the Commissioner cannot grant any other relief or direct any action he may think the party would have been entitled to upon the record, had he applied for it. . . . . V. 10, p. 118

The defeated party in a case before the Interior Department is a party to the case until it is closed. He has the right to call attention to the manner in which the Secretary's decision is executed by the Commissioner. V. 10, p. 118

Particular acts of official misinformation must be shown. . . . . V. 10, p. 189

Contest for abandonment is dismissed as the six months after the authorized leave of absence under the act of June 4, 1880, had not expired . . . . . V. 10, p. 67

Two separate cases should not be forwarded to the Secretary under one letter of transmittal . . . . . V. 10, p. 67

The defect of notice by publication before affidavit is made that personal service cannot be had, is not, however, necessarily fatal to the contest itself. The proceedings, so far as irregular, may be set aside and resumed in a proper manner from the point of departure from the requirements of. . . . V. 10, p. 290

Where a party makes a fraudulent entry, a contest may be ordered at any time to defeat such fraud. . . . . V. 10, p. 269

In the Commissioner's discretion, appeal may be allowed in anomalous and exceptional cases. . . . . V. 10, p. 190

If an entry is inadvertently made it can be vacated only by proper proceedings upon due notice. . . . . V. 10, p. 190

Pre-emption Claim.

History of a complicated case involving a, and a private entry . . . . . V. 10, p. 342

Who can and cannot cite to a hearing involving a . . . . . V. 10, p. 166

The daughter of an alien, who, after filing his declaration of intention, died before taking out final papers is deemed a citizen, and she may initiate a, before taking prescribed oath. V. 10, p. 19

Where a prior, exists, a timber land entry will not be allowed. . . . . V. 10, p. 212

In view of the, the timber application is rejected . . . . . V. 10, p. 232

The residence described herein is held sufficient in a . . . . . V. 10, p. 345

It is not the, but the facts that govern. V. 10, p. 326

Certain railroad land which was temporarily reserved pending a, application for the tract, passed to the company upon rejection of the application . . . . . V. 10, p. 95

The tenant of a railroad company cannot base a, or homestead claim upon what occupancy . . . . . V. 10, p. 173

For lands in sections withdrawn for indemnity under railroad grants are not permitted. V. 10, p. 95

A pre-emptor intending at settlement to take a quarter section can claim the whole by performing acts of settlement upon one 80 acres while the other is inclosed and cultivated by another person . . . . . V. 10, p. 200

A subsequent settler who enters uninclosed land without force can acquire title. V. 10, p. 7

Pending a, a party cannot make a homestead entry without abandoning his. V. 10, p. 41

Reimbursements under the act of July 31, 1876, are not deposits contemplated by Sections 2401, 2402 and 2403 R. S., and the certificates cannot be used in payment of homestead and . . . . . V. 10, p. 196

Where a party holds possession of public land under color of title in good faith, an adverse, cannot be initiated by forcible entrance upon such land . . . . . V. 10, p. 105

The right to transmute a pre-emption filing to a homestead entry depends upon the validity of the . . . . . V. 10, p. 312

Pre-emptor.

A may settle on land covered by a homestead declaratory statement, and file his pre-emption declaratory statement. After the homestead party has made entry, the, is not deprived of his privilege of making proof and payment because of a third party's contest against said homestead entry. . V. 10, p. 153

Where a, publishes notice of intention to make final proof, the appearance of an opposing claimant who shows his own superior right and the pre-emptor's non-compliance with law does not constitute a contest. V. 10, p. 365

A, having failed to make due proof and payment, is allowed to homestead the same tract under act of May 14, 1880, notwithstanding a prior homestead entry thereon. V. 10, p. 4

A notice of final proof cannot operate to renew a controversy settled by formal decision of the Land Department . . V. 10, p. 326

Sale of land included in a declaratory statement, but never in possession of the, does not invalidate his claim . . V. 10, p. 312

A, having failed to show compliance with legal requirements, cannot be allowed another opportunity, but his filing should be cancelled. V. 10, p. 365

A fraudulent, cannot oppose a hearing on the ground of vested rights and *res adjudicata*. V. 10, p. 173

O'Claire did not make a *bona fide* settlement prior to his filing, and has not improved the land for his own exclusive use. V. 10, p. 172

A hearing is ordered to allow the, an opportunity to show affirmatively the validity of certain pre-emption filings . . . V. 10, p. 154

In view of the evidence presented, the, is allowed an opportunity to present further

proof within the thirty-three months from date of settlement . . . . . V. 10, p. 379

Where the, after such hearing, files a relinquishment, he cannot have his rights reinstated on what ground . . . . V. 10, p. 193

Contests between, to clear the record should not be permitted unless in exceptional cases . . . . . V. 10, p. 364

Where the acts of settlement performed by a, are of a character to evidence his good faith, continuous residence on the land is not essential . . . . . V. 10, p. 363

Where a, seeks to contest a timber culture entry, such attempted contest confers no preference right, and is no bar to a subsequent contest properly initiated by a homestead or timber culture applicant . . . . V. 10, p. 349

The timber culture entry made after default of, in filing is allowed to stand. V. 10, p. 275

Where a, relinquishes and makes a homestead entry loses the land if another party has meanwhile filed a declaratory statement. V. 10, p. 174

A, must do some act to connect himself with the tracts claimed. Mere intention is not sufficient. . . . . V. 10, p. 6

Where a party has paid for land, though no deed has passed, he is the owner, and cannot remove therefrom to become a, of public land . . . . . V. 10, p. 295

A, is not forbidden to settle on lands that are likely to become centres of population. V. 10, p. 71

Section 2260, R. S., does not debar a, who moves from his own home in a city, town or village upon a pre-emption claim. V. 10, p. 7

The purchase of a dwelling by a, is the same as the erection of one. The purchase of improvements is evidence of good faith when followed by inhabitancy after settlement. . . . . V. 10, p. 168

A party who goes upon public land as a tenant for a, or homesteader cannot claim against his landlord . . . . . V. 10, p. 226

A declaration of citizenship cannot have a retroactive effect to qualify as a, an alien at date of settlement . . . . . V. 10, p. 274

The time during which plats are withdrawn does not run against homesteader or. V 10, p. 333

A, is not prohibited from carrying on business elsewhere than on the land, provided his actual residence is thereon . . V. 10, p. 355

Where a, fails to assert his claim, it is error to order a hearing when the same land is entered thereafter . . . . . V. 10, p. 193

Discussion of the evidence adduced tending to prove the, unqualified in respect to age. V. 10, p. 363

The plat of township survey was filed July 30, 1878. Since that date temporary withdrawals have been made. The time will not run against homesteader and. . V. 10, p. 394

A, at making final proof, must reside on the quarter section. . . . . V. 10, p. 229

A, who fails to make final proof within time loses his right after a valid adverse timber culture claim intervenes. . V. 10, p. 231

How a, should perfect title when his land lies in two districts . . . . . V. 10, p. 172

As the final proof and affidavit of this; were made before a clerk of court outside the land district, his case will be submitted to the Board. . . . . V. 10, p. 41

The purchaser from a, has no standing before the Land Department. If patent issues, it issues to the. though it may inure to the purchaser's benefit. . . . . V. 10, p. 297

Purchaser from the, after entry, is not protected by the clause in section 2262, R. S., which clause refers to purchase before entry. V. 10, p. 397

A homestead entry is an appropriation of land from date of settlement, and after that date a, could acquire no rights except on cancellation of such entry . . . . V. 10, p. 168

A, cannot cite homestead entryman to a hearing until date of offering final proof, when. V. 10, p. 91

Joint entry by, and homestead claimants may be allowed . . . . . V. 10, p. 345

Question of residence by a, to a non-mineral tract where no adverse claim exists. V. 10, p. 87

Pre-emption Entry.

Where a, is cancelled for fraud, repayment of the purchase money will not be permitted. V. 10, p. 261

Where a, is cancelled for fraud, the Supreme Court scrip used in payment is forfeited . . . . . V. 10, p. 179

Instructions as to final affidavits in Dakota homestead and . . . . . V. 10, p. 360

An entry of record valid on its face excepts a tract of land from a subsequent law, grant or sale until a forfeiture is declared. V. 10, p. 215

It is competent for anybody, interested or not, to object to a . . . . . V. 10, p. 345

In view of agreement made, and the defendant's forcible intrusion, the land is awarded to plaintiff . . . . V. 10, p. 212

Final proof in homestead entry and, may be made before a county clerk at his office, notwithstanding no court may be held in his county . . . . . V. 10, p. 310

The facts in this case bring it within the act of June 4, 1880, and the, is allowed. V. 10, p. 122

Pre-emption Filing.—*See Declaratory Statement.*

Proceedings where a, embraces both offered and unoffered land. . . . . V. 10, p. 345

A contest against a, is not recognized. V. 10, p. 195

Proceedings where a party who relinquished a homestead entry, filed a, on another tract, and afterwards transmuted to a homestead entry. . . . . V. 10, p. 256

A pre-emptor cannot make a second, on the same tract of land . . . . . V. 10, p. 395

Where a pre-emptor relinquishes and makes a homestead entry he loses the land if another party has meanwhile filed a . . V. 10, p. 170

A person filing a, does not acquire a vested right in the land until when. . V. 10, p. 173

A party made a homestead entry, and prior

to six months from entry, made cash entry on a, covering different land; *h. ld*, that the homestead entry should be canceled. V. 10, p. 240

A soldier's additional homestead entry cannot be made upon the land of an actual settler who has asserted his right by a, or homestead entry . . . . . V. 10, p. 5

A, may be received for land claimed as swamp and overflowed . . . . V. 10, p. 135

Any legal form of entry is allowed on land covered by a, subject to the pre-emptor's rights. V. 10, p. 105

Pre-emption Right.

Settlement is the sole basis of the. Land not included in the settlement cannot be embraced in the claim . . . . . V. 10, p. 312

A single woman, who, after filing her declaratory statement, marries, waives her, and cannot make an entry . . . . . V. 10, p. 152

A, is not a vested right against the United States, but is simply a preference right among settlers should the government sell the land involved. Not until entry and payment have been made does the pre-emptor acquire a vested right . . . . . V. 10, p. 152

The unauthorized inclosure of several hundred acres is not an inception of a. V. 10, p. 6

A filing made on unoffered land more than three months after township plat was filed forfeits a . . . . . V. 10, p. 326

As the, was extinguished on the day of public sale described, the land became public land, and passed to the railroad grant. V. 10, p. 233

Where lands are in the actual possession of a party who has settled upon it, improved and fenced the same, no, thereto can be acquired by another who take forcible possession. V. 10, p. 7

Preferred Right.—*See Timber Culture.*

No, is obtained by cancelling a filing. V. 10, p. 195

In the event of a legal contest pending when the relinquishment is filed, the, of entry inures to the contestant, if the relinquishment is directly or constructively the result of such contest . . . . . V. 10, p. 375

No, is acquired by a contestant who alleges and proves fraud in the initiation of a timber culture entry . . . . . V. 10, p. 350

If a contest is improperly brought, the cancellation of the entry, on the relinquishment's presentation, gives no, and the first legal applicant takes the land involved. V. 10, p. 375

A contestant cannot shorten the thirty days' period of reservation by withdrawing or relinquishing his . . . . . V. 10, p. 42

Timber culture entry by another party may be allowed within the thirty days granted contestant within which to enter, subject to the, of contestant . . . . . V. 10, p. 93

There is no authority for contests against timber culture entries that have been made on land not devoid of timber. But where the land department has accepted such contests for its own benefit, and if upon the proofs furnished at the expense of the contestant the entry is cancelled, the contestant is entitled to a, of entry . . . . . V. 10, p. 328

A relinquishment under the circumstances by the timber claimant prior to the hearing can give no, to a third party . . V. 10. p. 198

The moment a relinquishment is filed, the land covered by the entry thus abandoned reverts to the government, and is open to settlement and entry. When the relinquishment is presented, the entry should be immediately cancelled, without reference to what party may acquire a, of entry by such cancellation. V. 10, p. 374

Settlement and entry may be made by a stranger in this case subject to the, of contestant . . . . . V. 10, p. 93

Towns have a, of entry to lands actually occupied for townsite purposes . V. 10, p. 155

Premises.

Mortgage on—real estate . . V. 10, p. 82

Principal.

A naked power of attorney may be revoked by a, but an executed power of attorney cannot be revoked . . . . . V. 10, p. 68

Bondsmen of Registers are not liable for breach of private trust by their . V. 10, p. 86

Private Entry.

Instructions as to . . . . . V. 10, p. 228

There is no express prohibition against, on offered lands that are occupied or selected, but not entered for a townsite, but such entries are, however, subject to the townsite right . . . . . V. 10, p. 155

When a tract of land is taken out of market for any reason, it cannot be purchased at, until it has been properly restored in order that all may have an equal opportunity to purchase. The tract, however, is subject to entry under the homestead and pre-emption laws without such restoration to market . . V. 10, p. 110

A suspension to investigate the alleged mineral character of offered land does not withdraw the tracts from, after the land is decided to be of agricultural character. V. 10, p. 342

In contest between townsite claimants and, for lands selected, but not actually occupied as a townsite, the number of inhabitants of the town at date of private entry determines the question of priority of right . V. 10, p. 155

History of a complicated case involving a pre-emption claim and a . . . V. 10, p. 342

A party who makes, is permitted to show cause why his private entry should not be cancelled where homestead entry was made subsequent to private entry . . V. 10, p. 362

Private Land Claim.—*See California—Mexican—Spanish.*

Definition of . . . . . V. 10, p. 201

Status of a certain, situate within the Pueblo of San Francisco . . . . . V. 10, p. 77

Case of Anton Chico considered. V. 10, p. 42

Certain swamp lands in Louisiana covered by a, of complete title do not pass to the State. V. 10, p. 317

The patented survey of Rancho Casmalia is left undisturbed . . . . . V. 10, p. 279

Status of the, of the town of Albuquerque, New Mexico . . . . . V. 10, p. 216

All questions involving the propriety of making the survey in this case, or the charges for making it should have been determined prior to payment of survey . . V. 10, p. 196

Appeal does not lie from a report by the Surveyor-General in a, in New Mexico. V. 10, p. 216

In, the date of approval should be regarded as the date of survey . . . . V. 10, p. 403

While the surveys in question throw grave doubt upon the accuracy of the survey of the, involved, yet in view of the fact that patent has issued for that claim, the accuracy of the survey thereof cannot now be questioned by the Land Department. . . . . V. 10, p. 315

A recommended confirmation by the Surveyor-General withdraws a, in New Mexico, and the judiciary cannot interfere until after Congress shall have rejected it . V. 10, p. 200

How the boundary of a, should be adjusted where the call is for the sea or bay. V. 10, p. 176

Survey of confirmed, in Arizona, California and New Mexico . . . . . V. 10, p. 48

A certain, becomes public land after having been rejected by the authorized tribunal. V. 10, p. 95

Valentine scrip is not locatable on lands within the claimed limits of a confirmed. V. 10, p. 98

Probate Judge.

What proofs and papers in land entries may be executed before a . . . . . V. 10, p. 374

The act of June 9, 1880, requires that affidavits when not sworn to before either of the local officers, shall be sworn to before the *clerk* of the county court, or of any court of record, etc. This affidavit was sworn to before the. If he is *ex officio* clerk of his own court, that statement should follow his signature to the jurat . . . . . V. 10, p. 105

Proof.—*See Burden of Proof— Final Proof— Evidence.*

Protest.

Where an entry was made prior to a, the Land Department will find for the entryman if there is conflicting testimony. V. 10, p. 392

Whatever is fundamental to the possession and right of possession of a mining claim is remitted to the courts, and parties who fail to set up an adverse claim to an application regularly made, cannot protect their rights by a, submitted to the Land Department. V. 10, p. 102

Where a, alleges that part of the applied-for premises is not subject to certain application, the Land Department has jurisdiction. V. 10, p. 51

Proxy.

Residence on a homestead must be in person and not by . . . . . V. 10, p. 90

Publication of Notice.—*See Notice—Contest.*

When, is required in contests. V. 10, p. 166

When and how notice by, should be given. V. 10, p. 374

Instructions as to, of intention to make final proof . . . . . V. 10, p. 360

An affidavit stating whereabouts of an entryman are unknown is not sufficient basis for, alone . . . . . V. 10, p. 86

Notices shall be published only in reputable papers of general circulation, the rates of which do not exceed the rates established by State or Territorial laws for the, of legal notices. V. 10, p. 360

The defect of notice by, before affidavit is made that personal service cannot be had, is not, however, fatal to the contest itself. The proceedings so far as irregular may be set aside and resumed in a proper manner from the point of departure from the requirements of practice . . . . . V. 10, p. 290

The local officers cannot dismiss a case. Where publication is had under act of March 3, 1879, notifying all persons of proposed proof, another publication is not needed under act of June 3, 1878 . . . . V. 10, p. 149

The selection of newspapers for, of mining notices rests in the discretion of the Register, within the limits prescribed by Section 2325 R. S. Other things being equal, the convenience of the applicant should be consulted. V. 10, p. 376

In weekly newspapers, mining application notices must be published 10 times successively. . . . . V. 10, p. 339

Public Lands.

Definition of adjacent. . . . V. 10, p. 20

Now undisposed of . . . . V. 10, p. 367

Upon what conditions aliens are allowed to make entry of. . . . . V. 10, p. 405

Lots made by attaching small and presumably unsalable tracts to adjoining subdivisions are legal subdivisions of the . . V. 10, p. 368

A certain private land claim becomes, after having been rejected by the authorized tribunal . . . . . V. 10, p. 95

Public Notices and Proclamations.

No. 873. Surveyor-General's office from Virginia City to Reno, Nevada. V. 10, p. 131

No. 874. Withdrawal from sale of certain lands in Wisconsin and Minnesota. V. 10, p. 146

No. 881. Surveyor-General from Yankton to Huron, Dakota . . . . . V. 10, p. 131

No. 882. Hailey Land District, Idaho, established . . . . . V. 10, p. 83

No. 883. Transfer of townships from Lake City to Leadville District, Colorado. V. 10, p. 243

No. 884. Two new land districts in Nebraska . . . . . V. 10, p. 59

No 885. Land Office from La Mesilla to Las Cruces, New Mexico . . . V. 10, p. 13

No. 886. Boundaries of Gunnison Land District established . . . . . V. 10, p. 47

No. 887. Sale of lands at St. Cloud, Minnesota . . . . . V. 10, p. 83

No. 888. New land district in Dakota. V. 10, p. 99

No. 889. New land district in Kansas. V. 10, p. 187

No. 890. Land office from Colfax to Spokane Falls, Washington Ty . . V. 10, p. 131

No. 891. Discontinuance of the Carson City, Nevada, Land Office . . V. 10, p. 236

No. 892. Sale of lands at Montgomery, Alabama . . . . . V. 10, p. 267
No. 893. Sale of lands at Huntsville, Alabama . . . . . V. 10, p. 267
No. 894. Sale of lands at Taylor's Falls, Minn. . . . . V. 10, p. 267
No. 895. Change of boundaries of the Garden City land district, Kansas. V. 10, p. 267

Public Officer.
The plea of being a, in this case is not sustained . . . . . V. 10, p. 207
A homestead entryman who cultivates and improves the land embraced in his entry is not excused from residing thereon because of his election as a, which requires his residence elsewhere . . . . . V. 10, p. 40

Public Sale—*See Public Notices.*
As the pre-emption right was extinguished on the day of, described, the land became public land and passed to the railroad grant. V. 10, p. 233

Purchase Money.—*See Repayment.*

Purchaser.
Before patent takes with notice of all defects, and of contingency that title may not be perfected . . . . . V. 10, p. 68
Rights of, under Receiver's receipts and certificates . . . . . V. 10, p. 193

Quarter Section.
The Aanrud case does not apply to irregular, where an entry approximating 160 acres could be easily made . . . . . V. 10, p. 168

Railroad.
Effect of departure of the line of definite location from the line of general route of the Northern Pacific Railroad . . . V. 10, p. 74
It has been the uniform practice of the department to permit a change of line after filing map of general route . . . . V. 10, p. 74
Patents to be issued for lands opposite the constructed portion of a, notwithstanding the peculiar language of the granting act. V. 10, p. 94
The wording "within fifteen miles of a completed," is not limited to an accessible. Notwithstanding a suspension of the lands from entry whereby the claimants could not make proof and payment until a, was finished past the lands in question, the entry price of coal lands is $20 an acre . . . V. 10, p. 341
The act of March 3, 1875, provides for the approval of maps showing the location of the right of way over *surveyed lands only*, and where right of way is claimed over *unsurveyed lands*, the maps can only be received and filed for the purposes of information, and cannot take the place of, or supersede the approval required by the language of the law. V. 10, p. 366
Instructions as to right of, to take material from the public lands . . . . . V. 10, p. 11
Where a map showing the proposed, has been approved, and the railroad company transfers the portion of its road embraced thereby to another company, a second approval of the same right of way is not required . . . . . V. 10, p. 329
Material for a right of way may be taken from any public land within the neighborhood . . . . . V. 10, p. 20
The tract having been within the claimed limits of an unadjusted private grant, at date of definite location of the, was subject to the timber culture application. As Sturm tendered the fees and commissions his heirs or legal representatives may make entry in view of his subsequent death, notwithstanding his said application was rejected by the local officers . . . . . V. 10, p. 381
Status of certain, lands in Louisiana. V. 10, p. 21
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Railroad Company.
Right of, to take timber from vacant public lands . . . . . V. 10, p. 138
The agent of a, may contract for ties to be cut from the public lands, but such ties cannot be sold by the company to other parties. V. 10, p. 20
Certain railroad land which was in a temporary state of reservation, pending a pre-emption application for the tract, passed to the, upon rejection of the application. V. 10, p. 95
A patent is not necessary to vest title in a certain, but title vests by virtue of the grant, and the act of certification to the State. V. 10, p. 243

Railroad Grant.
A, in *præsenti* requires only definite location to give it precision and effect. A railroad line is definitely fixed when the route has been surveyed, and a map must be prepared, setting forth the actual survey of such line as finally adopted by the company. The grant takes effect when such map is filed with the Secretary of the Interior. V. 10, p. 313
A tract within the overlapping limits of the Minnesota grant of 1857, and the Northern Pacific grant of 1864, is solely within the senior grant . . . . . V. 10, p. 215
How the grant to a certain railroad is affected by an assignment to another company. V. 10, p. 75
In view of the date of definite location of the railroad past the land the Oregon Donation claim is allowed . . . . . V. 10, p. 213
An entry void on its face does not except land from a . . . . . V. 10, p. 300
Notwithstanding failure of homestead claimant to appeal from local officers' decision rejecting part of his homestead within a, the claim is allowed the heirs, after an elapse of eleven years . . . . . V. 10, p. 56
Homestead entries or pre emption claims for lands in sections withdrawn for indemnity under, are not permitted . . . . V. 10, p. 95
As the pre-emption right was extinguished on the day of public sale described, the land became public land and passed to the. V. 10, p. 233
T. filed D. S. May 19, 1869, and relinquished March 29, 1871. B. homesteaded March 29, 1871, railroads claim under act of May 6, 1870. As no privity of interest is

shown between T. and B., and T.'s right was simply inchoate, the land is awarded to the railroads . . . . . V. 10, p. 234

A declaratory statement on file at date of definite location of the road, opposite the tract, excepts the land from the . V. 10, p. 20

Where a Mexican grant is confirmed by specific boundaries, land claimed by the grantee outside such boundaries will not be excepted thereby from a, which took effect while the Mexican grant was *sub judice*.

V. 10, p. 216

Tract does not pass to the company, because within a Mexican grant *sub judice* when the, became effective . . . . . V. 10, p. 13

Railroad Indemnity Lands.

Within Wisconsin and Minnesota must be selected within three months from notice to the railroad. Indemnity for the lands lost within those States must be selected within those States . . . . . V. 10, p. 154

Settlement on, is illegal . . . V. 10, p. 400

Proceedings suggested in case of two tracts entered by settlers within reserved.

V. 10, p. 153

Railroad Limits.

State selections cannot be made of double minimum lands within, where the lands lost were minimum in price . . . . V. 10, p. 110

Surveyor-General's scrip located within, prior to withdrawal, excepts the land from the grant. . . . . V. 10, p. 94

Alabama is entitled to have certification of the lands in question for purposes of identification, leaving all questions of reversionary rights to be declared upon by Congress.

V. 10, p. 300

Huertas scrip cannot be located within any six mile, in Florida . . . . . V. 10, p. 403

When the odd sections in certain townships within the limits of a railroad grant are excluded from the grant because reserved for Indian uses at the time the grant took effect, the price of the even sections in the same townships is not reduced to single minimum on that account . . . . . V. 10, p. 108

Railroad Withdrawal.—*See Withdrawal.*

Real Estate.

An owner of, who stands by and allows improvements to be made thereon, while he may not be permitted to claim the improvements, will not thereby be estopped to assert title to the fee . . . . . V. 10, p. 110

Court decisions affecting.

V. 10, pp. 82, 83, 86

Receiver.—*See Register and Receiver.*

Is the proper party to determine all questions of fees. . . . . V. 10, p. 198

Payments must be made only to the.

V. 10, p. 86

A clerk or Register or, but not a special agent, may make a timber culture entry in a district other than the one in which he is located. . . . . V. 10, p. 232

As the residence of a certain, is at the place where his office is located, he cannot make a homestead entry in another land district near by . . . . . V. 10, p. 343

In view of the testimony, the soldier's homestead entry of McElrath, late, at Miles City, Montana, is ordered canceled, notwithstanding withdrawal of contestant.

V. 10, p. 311

A homestead entry by a sister of the, is not objectionable on that account alone.

V. 10, p. 121

Receivers' Receipts.

Rights of purchasers under, and certificates.

V. 10, p. 193

How land embraced in certificates and, should be described . . . . . V. 10, p. 179

Records.

The land office, are public and open to inspection when . . . . . V. 10, p. 2

Register.

A clerk or, or Receiver, but not a special agent, may make a timber culture entry in a district other than the one in which he is located. . . . . V. 10, p. 232

A clerk *de facto* in the office of the, with the Register's knowledge and sanction, is competent to receive applications and give them legal effect. . . . . V. 10, p. 134

Wrong advice of the, cannot be accepted as an excuse for non-compliance with law. If the officer refused to accept the application, the applicant should have appealed.

V. 10, p. 315

The official report of the, that notice was given, will be accepted in preference to the affidavit of an interested party . V. 10, p. 233

Is not authorized to receive moneys.

V. 10, p. 86

Bondsmen of, are not liable for breach of private trust by their principals . V. 10, p. 86

The fees for issuing notices in certain cases belong to the new . . . . . V. 10, p. 270

The selection of newspapers for publication of mining notices rests in the discretion of the, within the limits prescribed by section 2325 R. S. Other things being equal, the convenience of the applicant should be consulted. . . . . V. 10, p. 376

Registers and Receivers.—*See Practice.*

Appropriation for. . . . V. 10, pp. 31, 48

Act relative to certain fees allowed.

V. 10, p. 30

Local officers must promptly obey the orders of the Commissioner of the General Land Office . . . . . V. 10, p. 342

The misleading advice of, should not prejudice a claimant's rights . . . V. 10, p. 173

Particular acts of official misinformation by, must be shown. . . . . V. 10, p. 189

The rights of parties relate back to date of inception, as against each other, and they are not prejudiced by failure of the, to do justice.

V. 10, p. 238

A timber culture entry is allowed to stand, notwithstanding the party was a clerk in the local land office . . . . . V. 10, p. 259

The, act judicially. Their decision is conclusive in all collateral proceedings.

V. 10, p. 79

Examination of the records of the local offices must be controlled by. . V. 10, p. 189

Copies of plats and diagrams can be made only by the, or their clerks . . V. 10, p. 189

Have no authority to execute or charge for certain certificates . . . . . V. 10, p. 2

There is no law or regulation requiring, to furnish copies or to charge for making or certifying the same . . . . . V. 10, p. 270

Under the act of March 3, 1883, local officers at other than consolidated offices cannot furnish information from the records in the shape of *abstracts*, except for uses mentioned in the statute; but it is held, under the above ruling, that they may furnish the same or equivalent information in the form of diagrams . . . . . V. 10, p. 302

The, may determine whether any part of the public domain is "mining ground."
V. 10, p. 79

Homestead entry may be amended to embrace a contiguous lot not included through error of. . . . . V. 10, p. 208

Notwithstanding failure of homestead claimant to appeal from decision of, rejecting part of his homestead within a railroad grant, the claim is allowed the heirs after an elapse of eleven years . . . . . V. 10, p. 56

Where, must take testimony . . V. 10, p. 390

A party may appear at a hearing specially to plead to the jurisdiction. If his objection is overruled, the party may enter a general appearance and go to trial on the merits, or the case may proceed as in default of a general appearance. In either case, all testimony offered must be received and a decision be made by the . . . . . V. 10, p. 380

Proceedings in contests in states where the Commissioner is *ex officio* . . . . V. 10, p. 67

Thirty days allowed from receipt of notice of decision by the, and ten days additional for transmission of notice and return of appeal.
V. 10, p. 86

Must report if appeals have or not been taken . . . . . V. 10, p. 190

Rights lost by failure to appeal from decision of, cannot be restored by appeal to the Interior Department . . . . . V. 10, p. 34

Should report in every case, but especially in *ex parte* cases, all facts within their personal knowledge, and whatever tends to show any fraudulent proceeding . . . V. 10, p. 355

Rehearing.

Ordered in view of the documents submitted . . . . . V. 10, p. 19

Reinstatement.

Of entries at request of third parties, refused . . . . . V. 10, p. 68

Relief.

After a case has been decided by the Secretary, and a particular, granted, the Commissioner cannot grant any other, or direct any action he may think the party would have been entitled to upon the record, had he applied for it . . . . . V. 10, p. 118

Relinquishments.—*See Contest—Hearing.*

Instructions as to . . . . . V. 10, p. 38

Instructions as to speculative and fraudulent . . . . . V. 10, p. 223

Ruling under circular of January 12, 1883.

Entry is canceled for fraud . . V. 10, p. 125

A, does not open land to pre-emption entry until filed; if then a legal contest and application to enter are pending, the contestant on the successful termination of the contest has a preference right of entry . . . . V. 10, p. 391

The moment a, is filed, the land covered by the entry thus abandoned reverts to the Government, and is open to settlement and entry. When the, is presented, the entry should be immediately canceled without reference to what party may acquire a preference right of entry by such cancellation.
V. 10, p. 374

Of an entry will not be recognized except on proof of proper authority therefor.
V. 10, p. 365

A, to have full force and effect must have been knowingly and voluntarily made. Murphy's was obtained through misrepresentation and deceit, and his signature is without attestation . . . . . V, 10, p. 377

Effect of a, obtained while the homestead party was intoxicated . . . . . V. 10, p. 91

A, obtained while the claimant was in a drunken stupor, and objected to afterwards, cannot be considered a voluntary act.
V. 10, p. 349

Offering to sell a, is not sufficient ground on which to order a hearing . . V. 10, p. 290

The purchaser of the, of public land entry gains no rights against the United States from the mere fact of such purchase, and the question of duplicate sales or of the payment or non-payment of the purchase money, has no legal bearing in the determination of a case . . . . . V. 10, p. 124

Where a contest is ended by, the land becomes public land, subject to entry by the first rightful applicant . . . . . V. 10, p. 2

In the event of a legal contest, pending when the, is filed, the preference right of entry enures to the contestant, if the, is directly or constructively the result of such contest . . . . . V. 10, p. 375

If a contest is improperly brought, the cancellation of the entry, on the presentation of, gives no preference right, and the first legal applicant takes the land involved.
V. 10, p. 375

A, may be an independent transaction and not evidence in the contestant's favor, when the land will be open to the first legal applicant . . . . . V. 10, p. 258

A, after contest has been closed can have no effect . . . . . V. 10, p. 212

An, application to contest made after a certain, should be dismissed . . . . V. 10, p. 2

A, under the circumstances by the timber-claimant prior to the hearing, can give no preference right to the third party. V. 10, p. 198

In view of the facts presented the timber culture entry is allowed to stand. V. 10, p. 243

The, of a timber culture entry held for examination and declared valid relates back to date of filing, and an application to enter presented between the date of filing the, and the date of canceling entry should be received as the first legal application . . . V. 10, p. 299

Where the pre-emptor after such hearing files a, he cannot have his rights reinstated on what ground. . . . . V. 10, p. 193

While upon, of a timber culture entry the land is subject to entry by a qualified party, such right may be subject to the right of another party who has duly contested and procured the cancellation of the entry.
V. 10, p. 258

In case a homestead entry embracing an area in excess of 160 acres (the party paying for such excess) is cancelled for, or abandonment, the party to the entry has no claim to the excess in area over 160 acres.
V. 10, p. 360

In view of the evidence submitted, and the validity of the, filed, Bank's homestead entry is allowed to stand. . . . . V. 10, p. 378

The patent erroneously issued for the tract not in dispute can only be vacated by voluntary, or by proceedings in court. . V. 10, p. 5

In view of the, of the prior homestead entry in Alabama, the tract in question must be offered at public sale. . . . . V. 10, p. 240

In view of the altitude and lack of moisture the land in this homestead entry will not produce crops, a, and second entry are permitted. . . . . V. 10, p. 273

Relocation.

An applicant for mining patent who, a co-owner, relocated a mine in his own name, as single proprietor, is not obliged to show title back of such, but if the proceedings are otherwise regular, and his former co-owners or other parties fail to assert an adverse claim, patent may issue in the applicant's name.
V. 10, p. 119

Under the mining laws of the United States and those of Colorado, a mining claim cannot be re-located so as to embrace ground claimed and possessed by others under color of law.
V. 10, p. 392

Repayment.

In cases of, an assignee is one who purchases the land involved, after entry and prior to cancellation. . . . . V. 10, p. 58

Where the government cannot give title to lands selected by a railroad, the fees paid should be returned . . . . . V. 10, p. 197

Allowed under Act of June 16, 1880, where a second homestead entry was made through ignorance . . . . . V. 10, p. 10

In cases of cash entry and scrip and warrant locations . . . . . V. 10, p. 10

Where a hearing is held, based upon allegations of a pre-emptor's bad faith, and the party, though notified, fails to appear, or to appeal from the adverse decision of the local officers, of purchase money will not be allowed on the ground that the testimony at such hearing fails to establish bad faith.
V. 10, p. 126

Is refused in cases where land was sold at $2.50 per acre, without offering, after the passage of the act of June 15, 1880.
V. 10, p. 151

A certain pre-emptor's money is forfeited and, is refused. . . . . V. 10, p. 9

Where a pre-emption entry is cancelled for fraud, of the purchase money will not be permitted. . . . . V. 10, p. 261

Where a pre-emption entry is cancelled for fraud, the Supreme Court scrip used in payment is forfeited . . . . . V. 10, p. 179

Not allowed where desert land entry has been cancelled for non compliance.
V. 10, p. 25

Where a party protests against the local officer's order that the preference right of entry or contest shall be awarded to the highest bidder, and, instead of appealing therefrom, bids and pays his money for such right, he cannot recover it. . . . . V. 10, p. 330

Reservation.—*See Indian Lands—Military Reservation.*

Of public lands are created by law, not by the will of individuals. Lands reserved for California private land claims are lands claimed as provided by the act of 1851. Claims afterwards set up to include other lands are not recognized as working a, of the additional land . . . . . V. 10, p. 333

A presumptive, may be overcome. Erroneous markings on plats and field notes do not constitute reservations, and such markings are not conclusive evidence of the character of the land. . . . . V. 10, p. 238

Filings and entries cannot date back of day when reserved land is ordered restored to the public domain. . . . . V. 10, p. 238

A homestead entry is a, of the land embraced thereby. . . . . V. 10, p. 169

Certain railroad land, which was in a temporary state of, pending a pre-emption application for the tract, passed to the railroad company upon rejection of the application.
V. 10, p. 95

The selection of these lands operates as a, and an appropriation thereof for the purposes of the act of February 21, 1855. The executive has no further jurisdiction over them.
V. 10, p. 158

A contestant cannot shorten the thirty days period of, by withdrawing or relinquishing his preference right . . . . . V. 10, p. 42

A, made on application of the War Department must give way to a *prior* Porterfield Scrip application made when the land in question was public land. . . . V. 10, p. 98

Question of, in patent of right to work a mine. . . . . V. 10, p. 81

Residence.—*See Dwelling.*

Intentions are not the equivalent of actual, and improvement . . . . . V. 10, p. 40

Is largely a question of intent. V. 10, p. 19

Instructions as to, of applicant. V. 10, p. 37

As the, of a certain Receiver is at the place where his office is located, he cannot make a homestead entry in another land district near by. . . . . V. 10, p. 343

An actual, and settlement must first be established before an official compelled to live at a distance may make final proof. V. 10, p. 209

Exceptions stated where claimants are not obliged to reside upon their homesteads.
V. 10, p. 311

Poverty excuses non-continuous.
V. 10, p. 227

Under Section 2382, R. S., is required on one town lot to secure entry thereof.
V. 10, p. 367

The party's house was not upon the land entered. Yet, in view of the act of June 15, 1880, commutation may be allowed on the proof submitted . . . . . V. 10, p. 257

A certain entry under the act of July 5, 1876, is held for cancellation. . V. 10, p. 158

A pre emptor is not prohibited from carrying on business elsewhere than on the land, provided his actual, is thereon. V. 10, p. 355

Where the acts of settlement performed by a pre-emptor are of a character to evidence his good faith, continuous, on the land is not essential . . . . . V. 10, p. 363

In view of the pre-emptor's prior settlement and continuous cultivation, the land is awarded to him, notwithstanding his defective . . . . . V. 10, p. 105

A pre-emption claimant, at making final proof, must reside on the quarter section. V. 10, p. 229

The, described herein is held sufficient in a pre-emption claim . . . . . V. 10, p. 345

Madigan's, and improvements are not upon any part of the tract for which he filed. His claim falls within the meaning of Section 2262, R. S., and his entry will be canceled without recourse for the purchase money. V. 10, p. 401

Question of, by a pre-emptor to a non-mineral tract where no adverse claim exists. V. 10, p. 87

Party cannot reside on pre-emption and homestead claims at once. . . . V. 10, p. 41

How the six months within which a homestead claimant must begin, should be calculated. . . . . V. 10, p. 359

The five years in a homestead entry dates from entry and not from . . . . V. 10, p. 36

A homestead entryman who cultivates and improves the land is not excused from residing thereon because elected to a public office which requires his, elsewhere. V. 10, p. 36

Acts of settlement performed while the land is embraced in a homestead entry give a claimant no legal status. After cancellation of the homestead entry, the rights of two pre-emptors must be determined by their settlement and not by their. The first *bona fide* settler takes the land in dispute if followed within a reasonable time by his, thereon. V. 10, p. 274

Homestead claimant must show, and cultivation before application to purchase under Sec 2301 is made . . . . . V. 10, p. 91

On an adjoining tract and cultivation of the homestead is not a compliance with the law. . . . . V. 10, p. 70

Homestead entry allowed to stand, notwithstanding the party failed to make personal, within the required six months. V. 10, p. 90

On a homestead must be in person, and not by proxy . . . . . V. 10, p. 90

When a soldier was taken prisoner and paroled, and was discharged by reason of such parole, he would be entitled, in computing, on his homestead entry, to credit for his full term of enlistment, provided always, that at least one year's residence is had on homestead . . . . . V. 10, p. 304

Res Judicata.

The Commissioner of the General Land Office cannot review a final decision of his predecessor . . . . . V. 10, p. 233

Restoration to Market.

When a tract of land is taken out of market for any reason, it cannot be purchased at private entry until it has been properly restored, in order that all may have an equal opportunity to purchase. The tract, however, is subject to entry under the homestead and pre-emption laws without such. V. 10, p. 110

Filings and entries cannot date back of day when reserved land is ordered restored to the public domain . . . . . V. 10, p. 238

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Complaints for perjury must be made under the proper section of the, instead of under the original act . . . . . V. 10, p. 69

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Notwithstanding a fractional, 160 acres may be embraced in a timber culture entry. V. 10, p. 93

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A, is analogous to an entry. . V. 10, p. 197

Service.—*See Notice.*

Settlement.

The mere act of locking the door of a purchased house is not. . . . . V. 10, p. 168

Is a personal act, and can date only from the time the party went upon the land. V. 10, p. 281

A, is an appropriation of land, and a subsequent homestead entry is subject to the settler's compliance with law. The entry appropriates it against the world except the prior settler . . . . . V. 10, p. 312

The act of, must be notorious and significant of a purpose. . . . . V. 10, p. 70

Where the acts of, performed by a pre-emptor are of a character to evidence his good faith, continuous residence on the land is not essential. . . . . V. 10, p. 363

The purchase of a dwelling by a pre-emptor is the same as the erection of one. The purchase of improvements is evidence of good faith when followed up by inhabitancy after. V. 10, p. 168

The purchase of a prior settler's improvements does not transfer the vendor's date of. V. 10, p. 281

Acts of, performed while the land is embraced in a homestead entry give a claimant no legal status. After cancellation of the homestead entry, the rights of two pre-emptors must be determined by their, and not by their residence. The first *bona fide* settler takes the land in dispute if followed within a reasonable time by his residence thereon. V. 10, p. 274

Acts of, performed prior to cancellation of homestead entry can avail naught. V. 10, p. 240

Work by a party who is hired to dig a ditch cannot be claimed as an act of. V. 10, p. 194

An actual residence and, must first be established before an official compelled to live at a distance may make final proof. V. 10, p. 209

A pre-emptor intending at, to take a quarter-section can claim the whole by performing acts of, upon one 80 acres while the other is enclosed and cultivated by another person. V. 10, p. 200

Is the sole basis of the pre-emption right. Land not included in the, cannot be embraced in the claim. . . . . V. 10, p. 312

A filing and, before declaration of citizenship are of no legal effect. But where no adverse claim intervenes prior to declaration of citizenship and a subsequent, the original filing should not be cancelled . V. 10, p. 257

An alien can claim nothing by a, prior to his declaration to become a citizen. V. 10, p. 326

A declaration of citizenship cannot have a retroactive effect to qualify as a pre-emptor an alien at date of . . . . . V. 10, p. 274

In this case the wife may relinquish her entry, and the husband may enter the land, and in making final proof, his right will relate back to date of original . . V. 10, p. 241

A homestead entry made by a married woman to protect the family property and secure a home, is cancelled, but the husband is permitted to make entry and date from the time he went upon the land with his family. V. 10, p. 294

The entry of a minor cancelled; but he is allowed to make another, with credit for, from the date he becomes 21 years of age. V. 10, p. 87

Existing entries a bar to other entries or filings not based on prior . . . V. 10, p. 333

A certain entry under the act of July 5, 1876, is held for cancellation . V. 10, p. 158

And entry may be made by a stranger in this case, subject to preference right of contestant . . . . . V. 10, p. 93

Timber trespass does not depend upon the number of trees cut, but on the character of the . . . . . V. 10, p. 327

Where the facts show good faith in, and cultivation by the homesteader, cutting and selling of timber need not be reported. V. 10, p. 295

In view of the pre-emptor's prior, and continuous cultivation, the land is awarded to him notwithstanding his defective residence. V. 10, p. 105

Proceeding where A. made prior, and B. was the successful contestant . V. 10, p. 193

The, claimed by Seacord is not a legal. V. 10, p. 235

O'Claire did not make a *bona fide*, prior to his filing and has not improved the land for his own exclusive use . . . . V. 10, p. 172

A certain notice of Durant's claim was sufficient . . . . . V. 10, p. 296

The effect of negative testimony to disprove act of . . . . . V. 10, p. 70

A certain preemptor is allowed an opportunity to present further proof within the thirty-three months from date of . . . V. 10, p. 379

A homestead entry is an appropriation of land from date of, and after that date a pre-emptor could acquire no rights except on cancellation of such entry . . V. 10, p. 108

Section 2309 R. S. provides that, and improvements must be made within six months from date of filing . . . . . V. 10, p. 169

In railroad indemnity lands is illegal. V. 10, p. 400

A, within the indemnity limits of the Southern Pacific R. R. after withdrawal and prior to June 28, 1870, validated by the joint resolution of June 28, 1870 . . V. 10, p. 300

The fact that the line of general route was changed after the, is immaterial, provided the tracts fell within the lines of both general routes . . . . . V. 10, p. 240

Status of a certain tract within this body of land . . . . . V. 10, p. 281

Certain homestead claimant protected by

the principles of the Atherton-Fowler decision against an adverse entry having no foundation in any . . . . . V. 10, p. 4

Settlement Claim.

When an adverse claim not made under the settlement laws will not lie against a settler in actual possession . . . V. 10, p. 193

Settler.—*See Homestead—Pre-emptor.*

General circular . . . . . V. 10, p. 37

Instructions as to, on unsurveyed lands. V. 10, p. 38

Rights of, on unsurveyed lands. V. 10, p. 256

A, on unsurveyed lands is not bound to file his declaratory statement until when. V. 10, p. 345

On land covered by homestead entry which has expired by limitation . . . V. 10, p. 226

How the rights of, within the incorporated limits of a city or townsite may be protected. V. 10, p. 106

A subsequent, who enters unenclosed land without force can acquire title . . V. 10, p. 7

Where improvements had been made before survey and by mistake were placed on an odd section, the Department cannot relieve the. V. 10, p. 246

Where a party believes that as a, he had a better right to the tract than the entryman, he should initiate contest by filing his application to enter within the period prescribed by law . . . . . V. 10, p. 271

A prior, may initiate a contest against an entryman . . . . . V. 10, p. 231

In view of the facts, the land is awarded to the . . . . . V. 10, p. 108

A, on timber land must have time to complete title, unless from his methods the special agent is satisfied that he is not there *bona fide*. V. 10, p. 327

Act of June 3, 1878, prohibits the cutting of any timber on the public lands, with intent to dispose of the same; but the proviso thereto permits a, to clear his claim as fast as the same is put under cultivation, and the timber cut in the course of such clearing may be disposed of by the, to the best advantage. V. 10, p. 370

Where a, goes upon land afterwards sought to be entered under the act of June 3, 1878, such settlement followed by a homestead entry precludes a timber entry, and questions as to the relative value of the land for agricultural purposes or for timber, are not to be considered . . . . . V. 10, p. 398

In case of unsurveyed lands, where a party notifies a subsequent, to keep his stock away from the land covered by the prior party's improvements, it is sufficient notice that he claims the subdivision upon which his improvements should appear to be when survey was made . . . . . V. 10, p. 326

The enclosure of large tracts of public land for grazing purposes is trespass. Persons desiring to become *bona fide*, may tear down the fences surrounding the tract. V. 10, p. 19

The act of March 3, 1875, allows, prior to 1874, to take 160 acres of the reserved Indian lands on certain conditions . . . V. 10, p. 5

Who can claim no rights as a, when the desert land entry is cancelled . V. 10, p. 197

Joint Resolution of June 28, 1870, protected the rights of actual, at the time on the railroad lands . . . . . V. 10, p. 276

To what extent, may go upon reserved school sections in Washington Territory and cultivate the same . . . . . V. 10, p. 157

In view of the trespass of the alleged, and the facts shown the Valentine scrip location is sustained . . . . . V. 10, p. 199

Proceedings suggested in the case of two tracts entered by, within reserved indemnity limits of a railroad grant . . . . V, 10, p. 153

Instructions as to certificate of deposit, for survey by . . . . . V. 10, p. 249

Soldier.

Where a, made a homestead entry of other than that upon which he filed a homestead declaratory statement under the rule in force prior to issuance of circular of December 15, 1882, and good faith is shown, this office is not disposed to disturb the entry. V. 10, p. 104

Where a, was taken prisoner and paroled, and was discharged by reason of such parole, he would be entitled, in computing residence on his homestead entry, to credit for his full term of enlistment; provided always, that at least one year's residence is had on the homestead . . . . . V. 10, p. 394

Soldier's Additional Homestead Entry.—*See Homestead.*

A, cannot be made upon the land of an actual settler who has asserted his right by a pre-emption filing or homestead entry. V. 10, p. 5

A certificate of right to make a, for 19.85 acres may be located on a 40-acre tract by paying for the excess in cash . . V. 10, p. 70

In view of the accrued and prospective expenses of litigation, the soldier is allowed to withdraw his location without prejudice, to make another location and entry under his. V. 10, p. 276

An attorney acting under a power as described, may delegate his authority directly to a second person, but not indirectly through the medium of some other person. The second attorney of record cannot utilize the proof filed by the first attorney, but he must procure and file the required evidence himself . . . . . V. 10, p. 362

The purchaser of the unlawful homestead certificate is allowed to purchase the entered land under the act of June 15, 1880. V. 10, p. 243

The certificate in this case must be delivered to the deceased soldier's attorney, and not to the widow's attorney. . . V. 10, p. 257

Location by agent of any certificate of right to make an additional homestead entry (no matter what date it bears), issued by the Land Department is permitted . . . V. 10, p. 273

A, is granted notwithstanding a contest initiated for abandonment of the original entry. V. 10, p. 37

A purchase of land after certificate erroneously issued has been located, may be referred to the Board of Equitable Adjudication. V. 10, p. 394

Certificate improperly issued is void, and an entry made therewith by a purchaser should be canceled. . . . . V. 10, p. 211

Spanish Grant.

When actions for recovery of unconfirmed, could be brought. . . . . V. 10, p. 201

Special Agent.—*See Fraud—Trespass.*

Instructions forbidding parties to export from a State or Territory the lumber and timber cut therein. The, in this case is ordered to ascertain the value of the timber already cut, where it is now, the distance to the nearest available market, and the value in such market. . . . . V. 10, p. 136

A clerk or Register or Receiver, but not a, may make a timber culture entry in a district other than the one in which he is located. V. 10, p. 232

Notwithstanding adverse report of, the preemption filing is sustained. . . V. 10, p. 363

When the State has completed any portion of its indemnity proofs, they must be turned over to the, when they will be certified and forwarded to the General Land Office. V. 10, p. 280

Entry cannot be canceled solely on the report of a . . . . . V. 10, p. 305

Pay of, for expenses . . . . V. 10, p. 125

A settler on timber land must have time to complete title, unless from his methods the, is satisfied that he is not then *bona fide.* V. 10, p. 327

Instructions to. . . . . V. 10, p. 136

Speculation.—*See Relinquishment.*

To what, the statute refers . . V. 10, p. 71

State Selections.

Such selections cannot be made of double minimum lands within railroad grants, where the lands lost were minimum in price. V. 10, p. 110

The, being void no right passed under it to plaintiff . . . . . V. 10, p. 160

Stranger.

Settlement and entry may be made by a, in this case, subject to the preference right of contestant . . . . . V. 10, p. 93

A, to a case has no right to appeal. V. 10, p. 3

Suit.

Where, has been commenced on an adverse mining claim, local officers should not receive from the adverse claimant an application for patent for the ground in conflict. V. 10, p. 192

A waiver of a, commenced on an adverse claim must become effective how. V. 10, p. 51

A patent for a mining claim will not issue while a, is pending in court involving the right of possession to the land notwithstanding the adverse claim filed in the land office has been dismissed for irregularity. V. 10, p. 322

An adverse mining claimant who secures judgment may apply for patent without waiting for appeal to a higher court. V. 10, p. 167

Supreme Court Scrip.

Where a pre-emption entry is canceled for fraud, the, used in payment is forfeited. V. 10, p. 179

Surface Ground.—*See Mining Claim.*

To what extent withinpatented a town-site, a lode claimant may take. . . . V. 10, p. 52

Survey.

Appropriation for . . . . . V. 10, p. 48

Instructions as to restoration of lost and obliterated corners . . . . . V. 10, p. 43

The, of lines and establishment of new corners is illegal where the land involved was sold under an approved prior . V. 10, p. 261

Applicants for, must deposit the money therefor . . . . . V. 10, p. 179

Instructions as to certificate of deposit for, by settler. . . . . V. 10, p. 249

Instructions in requesting, of islands. V. 10, pp. 126, 135

Of real estate . . . . . V. 10, p. 185

A certificate of purchase issued for land which is not public land and had not been surveyed by the United States, is void. V. 10, p. 160

In view of the circumstances, it is held that there is no vacant land in the described section . . . . . V. 10, p. 248

All questions involving the propriety of making the, in this case or the charges for making it should have been determined prior to payment of . . . . . V. 10, p. 196

Failure to comply with the regulations of the Surveyor-General does not necessarily annul a, except when . . . . . V. 10, p. 69

Reimbursements under the act of July 31, 1876, are not deposits contemplated by Sections 2401, 2402, 2403 R. S., and the certificates cannot be used in payment of homestead and pre-emption claims . . . . V. 10, p. 190

In private land grants, the date of approval should be regarded as date of . V. 10, p. 403

The patented, of Rancho Casmalia is left undisturbed . . . . . V. 10, p. 279

While the surveys in question throw grave doubt upon the accuracy of the, of the private land claim involved, yet in view of the fact that patent has issued for that claim, the accuracy of the, thereof cannot now be questioned by the Land Department. V. 10, p. 315

When, can be made of a private grant in California . . . . . V. 10, p. 201

Where homestead claimants settled before, on the same forty-acre tract, joint cash entry may be made . . . . . V. 10, p. 229

Where a legal subdivision contains swamp and overflowed land equal in area to more than half of such subdivision, the entire tract passes to the State under the act of September 28, 1850, and a survey segregating the swamp from the arable land therein should not be approved . . . . . V. 10, p. 280

The division of forty-acre tracts into ten-acre lots authorized for the purpose of enabling the placer location to conform to. V. 10, p. 3

Applicants for mining patent are not bound to note conflicts with unofficial, on plats or field notes . . . . . V. 10, p. 69

The plat of, of a lode-mining claim must show all conflicts, and unless such conflicts are shown the, should not be approved. V. 10, p. 240

Where an adverse claimant files a plat made from the field notes of applicants, and the location certificates of the adverse claims certified by U. S. Deputy Surveyor with an explanation that an actual, is not practicable, such plat is held sufficient . . . V. 10, p. 340

The applicant for a mining patent may contract with any U. S. Deputy Surveyor for the field work in making the necessary. The office work must be done by the Surveyor-General . . . . . V. 10, p. 272

Where a lode claim is located over a, already patented, the later lode must be shown to extend beyond the lines of the patented. The new discovery shaft cannot be located on such patented claim. Improvements made within the patented ground cannot be credited to later claim . . . . . V. 10, p. 150

Report on, of Devil's Lake Indian Reservation . . . . . V. 10, p. 235

Surveyor-General.

Appropriations for . . . V. 10, pp. 30, 47

A statute fixing a salary at a certain sum is not a contract that the salary shall not be reduced during the term of service. V. 10, p. 404

Appeal does not lie from report by the, in a private land claim in New Mexico. V. 10, p. 216

Land in Louisiana is confirmed to the State if reported as swamp by the, prior to March 3, 1857 . . . . . V. 10, p. 21

A recommended confirmation by the, withdraws a private land claim in New Mexico, and the judiciary cannot interfere until after Congress shall have rejected it . V. 10, p. 200

Failure to comply with the regulations of the does not necessarily annul a survey, except when . . . . . V. 10, p. 69

The Commissioner of the General Land Office is the auditing officer of the public land service, and he may disallow an item in the ordinary expenditures of a Surveyor-General's office. Extraordinary expenditures should first be submitted for his approval before they are incurred . . . . V. 10, p. 404

After a judgment has been rendered by the superior court following the reference thereto of a contest to purchase land from the State the, is bound to obey such judgment. V. 10, p. 163

Surveyor-General's Scrip.

Located on railroad land prior to withdrawal excepts the land from the grant. V. 10, p. 94

Swamp Land.

Appropriation for adjusting claims for indemnity for . . . . . V. 10, pp. 31, 48

Certain land tillable after the first day of June is not . . . . . V. 10, p. 176

The evidence at the hearing to determine the character of the land involved fails to show its swampy character . . V. 10, p. 280

The fee of one dollar to the local officers for each 160 acres located by States and corporations, allowed by Section 2238 R. S., is not payable on original selections of, but is required on indemnity locations. V. 10, p. 332

Where a legal subdivision contains, equal in area to more than half of such subdivision, the entire tract passes to the State under the act of September 28, 1850, and a survey segregating the swamp from the arable land therein should not be approved. V. 10, p. 280

A pre-emption filing may be received for land claimed as . . . . . V. 10, p. 135

When the State has completed any portion of its indemnity proofs, they must be turned over to the Special Agent, when they will be certified and forwarded to the General Land Office . . . . . V. 10, p. 280

Land in an old military reservation never released cannot be selected as . V. 10, p. 176

Certain in Tulare Lake region, California, passes to the State . . . . . V. 10, p. 23

Status of certain, in Louisiana. V. 10, p. 21

Certain in Louisiana covered by a private grant of complete title do not pass to the State . . . . . V. 10, p. 317

Tax Sale.

Real estate . . . . . V. 10, p. 82

Ten-acre Lots.

The division of forty-acre tracts into, authorized for the purpose of enabling the placer location to conform to the surveys. V. 10, p. 3

Tenant.

A party who goes upon public land as a, for a pre-emptor or homesteader cannot claim against his landlord . . . . . V. 10, p. 256

Where a party goes upon public land as the, of an absent person who has not made entry of the land, such may, as in this case, make entry in his own name . V. 10, p. 377

The, of a railroad company cannot base a pre-emption or homestead claim upon what occupancy . . . . . V. 10, p. 173

Tender.

Unless the required money is shown and offered, there is no legal . . . V. 10, p. 346

Real estate. . . . . V. 10, p. 83

Testimony.—*See Evidence—Proof.*

Fees for reducing to writing. V. 10, p. 26, 198

Circular of May 9, 1883, in relation to fees for reducing to writing. . . . . V. 10, p. 74

Where local officers must take. V. 10, p. 390

The effect of negative, to disprove act of pre-emption settlement . . . . V. 10, p. 70

In view of the, and the burden of proof, the land is awarded to the defendant. V. 10, p. 71

In view of the, a certain homestead entry is allowed to stand . . . . . V. 10, p. 91

Where an entry was made prior to a protest the Land Department will find for the entryman if there is conflicting. V. 10, p. 392

The, adduced as to its mineral character is not satisfactory. The testimony as to its agricultural character is meagre, but similar lands in the immediate vicinity produce valuable crops . . . . . V. 10, p. 293

Timber.

Object of protecting, upon government land. . . . . V. 10, p. 137

Appropriation for protection of. V. 10, pp. 31, 48

The measure of damages in an action for cutting, on the public lands . . V. 10, p. 370

Where coal exists, needed in mines should not be cut for fuel . . . . . V. 10, p. 172

Right of railroad companies to take, from vacant public lands . . . . . V. 10, p. 138

The owner of a mill-site may remove the, thereon only for his mining improvements. V. 10, p. 18

As the two parties interested seek to throw the responsibility upon each other, the value of the lumber, not logs, is demanded from them jointly. . . . . V. 10, p. 125

Instructions forbidding parties to export from a State or Territory the lumber and, cut therein. The special agent in this case is ordered to ascertain the value of the timber already cut, where it is now, the distance to the nearest available market, and the value in such market . . . . . V. 10, p. 136

Act of June 3, 1878, prohibits the cutting of any, on the public lands, with intent to dispose of the same, but the proviso thereto permits a settler to clear his claim as fast as the same is put under cultivation, and the timber cut in the course of such clearing may be disposed of by the settler to the best advantage. V. 10, p. 370

Timber Culture Application.

How made when a county embraces land in two districts. . . . . V. 10, p. 74

The required affidavit in a, may be sworn to before the filing of the township plat. V. 10, p. 399

The tract having been within the claimed limits of an unadjusted private grant at date of definite location of the railroad was subject to the; as Sturm tendered the fees and commissions, his heirs or legal representatives may make entry in view of his subsequent death, notwithstanding his said application was rejected by the local officers. V. 10, p. 381

Timber Culture Claimant.

General circular as to . . . . V. 10, p. 37

A pre-emptor who fails to make final proof within time, loses his right after a valid adverse right intervenes . . . . . V. 10, p. 231

Acts done or omissions by the, since date of initiating contest, have no bearing on contestants' rights . . . . . V. 10, p. 196

The filing of a preliminary affidavit under act of June 3, 1878, does not prevent a homestead entry subject to the rights of. V. 10, p. 198

A relinquishment under the circumstances by the, prior to the hearing can give no preference right to a third party, . V. 10, p. 198

Prospective inability of a, to prove up, gives no rights to a contestant. . V. 10, p. 170

In view of the excuses of the, for not doing the required breaking of five acres during the entire year allowed him and his good faith notwithstanding an error in judgment the contest is dismissed . . . . V. 10, p. 275

If a, is not in default as to the whole amount of breaking required at the time affidavit of contest is filed, the entry should not be declared forfeited . . . . . V. 10, p. 124

At the moment the original, fails to comply with the law, the right of another legal applicant to enter the land under the homestead or timber culture law is complete. V. 10, p. 258

Timber Culture Entry.—*See Devoid of Timber.*

Settlement and, may be made by a stranger in this case subject to the preference right of contestant . . . . . V. 10, p. 93

By a wife, is void at inception. V. 10, p. 232

A clerk or Register or Receiver but not a special agent may make a, in a district other than the one in which he is located. V. 10, p. 232

A, is allowed to stand notwithstanding the party was a clerk in the local land office. V. 10, p. 259

A married woman cannot make a homestead or, unless she has been deserted by her husband, or for some other reason can be regarded as the head of the family. V. 10, p. 323

Should be made upon vacant unimproved land . . . . . V. 10, p. 171

A, cannot be made on lands within the incorporated limits of a town . . . V. 10, p. 327

How the question, is land devoid of timber, should be determined . . . . V. 10, p. 171

The tract in question is not subject to, as the land is not naturally devoid of timber. V. 10, p. 275

Made on land containing a growth of cottonwood trees when such trees were not regarded as timber trees by the Land Department, is legal. Later rulings do not affect. V. 10, p. 55

A, of arid land without means of irrigating it indicates bad faith, especially if the law is not complied with in respect to otherwise preparing the land for planting. .V. 10, p. 380

An affidavit made as the basis of an entry while the land is under appropriation by a, cannot be received . . . . . V. 10, p. 41

An excess payment, less than one dollar is not required in homestead entry and. V. 10, p. 226

Only one, is allowed in a section. V. 10, p. 366

Notwithstanding a fractional section, 160 acres may be embraced in a. . . V. 10, p. 93

Only one, can be allowed in a section which embraces 862 acres . . . V. 10, p. 327

A certain homestead entry was changed to a, Atherton-Fowler decision held to apply thereto . . . . . V. 10, p. 226

Ruling under circular of January 12, 1883. Entry is canceled for fraud. . . V. 10, p. 125

A second, allowed, but without remission of fees . . . . . V. 10, p. 94

Having become a citizen, a former alien is allowed to make a second, with credit for fee and commissions paid on his canceled entry . . . . . V. 10, p. 260

The practice of allowing parties making a homestead or, credit for the fee and commissions paid by them on a canceled prior entry is discontinued . . . . . V. 10, p. 306

A party who applies to amend his, cannot be allowed to embrace a tract entered by another timber culture claimant who has no notice of the prior party's intention to claim

the land. The first party may be allowed to take some other tract, or have the money money paid as fees and commissions refunded. V. 10, p. 152

Notwithstanding, by the first party was refused under the Secretary's and Commissioner's instructions, and entry afterwards was allowed by another party, such entry is canceled and the first party is permitted to make his desired entry. . . . . V. 10, p. 107

The, made after pre-emptor's default in filing is allowed to stand . . . V. 10, p. 275

When cultivation by hoeing and permitting grass or weeds around young trees complies with the law. . . . . V. 10, p. 170

The relinquishment of a, held for examination and declared valid, relates back to date of filing, and an application to enter, presented between the date of filing the relinquishment and the date of canceling, should be received as the first legal application. V. 10, p. 299

A certain, is allowed to stand. V. 10, p. 243

By another party may be allowed within the thirty days granted contestant within which to enter, subject to contestant's preference right . . . . . V. 10, p. 93

Preference right of, by reason of settlement or of breaking a portion of the land prior to filing of township plat . . . . V. 10, p. 232

The circular of March 23, 1883, relative to fees for reducing testimony to writing, does not apply to . . . . . V. 10, p. 74

As other entries cover the land included by the proposed amendment of entry, the application for amendment is denied; but in view of the equities involved, the original, is canceled and a new one is permitted, with credit for existing payments . . V. 10, p. 106

A homesteader whose entry was about to be contested relinquished and made a, of the land. The contestant having settled upon the land prior to relinquishment, is entitled to make a homestead entry, and the, is held for cancellation, with credit for fees or repayment if desired. . . . . V. 10, p. 107

Where a qualified party desires to make both a homestead entry and a, he may commence contest against two . . V. 10, p. 107

A contest affidavit against a, is insufficient if it does not allege that the failure complained of exists at the present time. V. 10, p. 399

The charges in affidavit of contest against a, must be specific as to quantity. V. 10, p. 380

Contest against a, made under the act of 1874, must be judged by the act of 1878 when. V. 10, p. 196

The husband made, and abandoned the land and his family. His wife procured a divorce, and defends the present action as the head of a family and guardian for the children. She has no legal relations with the defendant otherwise. Proof of compliance with the law is held sufficient . V. 10, p. 349

There is no authority for contests against, that have been made on land not devoid of timber. But where the Land Department has accepted such contest for its own benefit, and if upon the proofs furnished at the expense of the contestant, the entry is cancelled, the contestant is entitled to a preference right of entry. . . . . V. 10, p. 328

Where an illegal contest against a, is pending, another contest by another party may be initiated against the same entry. V. 10, p. 212

Where a pre-emptor seeks to contest a, such attempted contest confers no preference right, and is no bar to a subsequent contest properly initiated by a homestead or timber culture applicant . . . . . V. 10, p. 349

The evidence adduced and good faith shown should, under prior rulings, entitle the applicants to make the, desired . V. 10, p. 365

The evidence in this case shows that the timber trees growing upon the land are either dead or dying, and valueless for timber purposes . . . . . V. 10, p. 365

Where a party contesting a, failed to make a formal written application to re-enter the land, but made a *verbal* application to do so, which was refused by the Register, the contest was held to be lawfully commenced, and the contestant entitled to the preference right to re-enter the land . . . . . V. 10, p. 122

No preference right is acquired by a contestant who alleges and proves fraud in the initiation of a . . . . . V. 10, p. 350

At the moment the original timber culture claimant fails to comply with the law, the right of another legal applicant to enter the land, is complete . . . . . V. 10, p. 258

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